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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1928

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## No. 782

## INTERSTATE COMMERCE COMMISSION, PETITIONER

vs.

## UNITED STATES OF AMERICA, AT THE RELATION OF CITY OF LOS ANGELES

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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# Court of Appeals of the District of Columbia

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No. 4863.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Appellant,

vs.

INTERSTATE COMMERCE COMMISSION.

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a Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 Filed July 12, 1928.

In the Supreme Court of the District of Columbia.

At Law.

No. 75,688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

*Petition for Writ of Mandamus.*

To the Honorable the Supreme Court of the District of Columbia:

Comes now the city of Los Angeles, a municipal corporation, and respectfully shows to the Court:

I. That the city of Los Angeles is a municipal corporation organized and existing under and by virtue of the laws of the state of California and is located in the county of Los Angeles, state of California.

II. That the Interstate Commerce Commission is the commission created by the Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce;" that the powers, duties and responsibilities of said Commission are specified by said Act and the acts supplemental thereto and amendatory thereof, and particularly the Act of February 28, 1920, known as the "Transportation Act, 1920;" and that said Commission has its principal office in the city of Washington, in the District of Columbia.

III. That Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific
2 Company, Southern Pacific Railroad Company, The Atchison, Topeka and Santa Fe Railway Company and Union Pacific Railroad Company are each a common carrier engaged in the transportation of passengers and property by railroad to, from and through said city of Los Angeles, in interstate and also intrastate commerce, and that each of said carriers is subject to said Act to Regulate Commerce and the acts supplemental thereto and amendatory thereof.

That said Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company each owns lines of railroad and railroad terminal properties and facilities engaged in said transportation and located in the city of Los Angeles and elsewhere; that said Southern Pacific Company operates said lines of railroad and railroad terminal properties and facilities of said Southern Pacific Railroad Company; that said Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company and The Atchison, Topeka & Santa Fe Railway Company operate said lines of railroad and railroad terminal properties and facilities respectively owned by them, as aforesaid; and that the entire capital stock of said Los Angeles & Salt Lake Railroad Company is owned by said Union Pacific Railroad Company and affiliated companies and that the property of said Los Angeles & Salt Lake Railroad Company is being operated as part of the so-called "Union Pacific System".

That opposite the first page of Exhibit A which is attached to and made a part of this Petition (to which exhibit more specific reference will hereinafter be made) will be found a map showing the location of the lines of railroad of said carriers in the city of Los Angeles.

3 IV. That the railroad lines of all of said carriers (other than said Pacific Electric Railway Company) within the city of Los Angeles have been constructed and are being maintained and operated in a general northerly and southern direction through said city, across many of the most important public streets of said city; that said railroad lines separate important and populous sections of the city of Los Angeles known as Boyle Heights and East Los Angeles, and also important and populous communities east of Los Angeles, from the business and residence centers of the city of Los Angeles located west of said lines of railroad and that said lines of railroad have made and now make intercommunication between the portions of the city of Los Angeles and other communities located on either side of said lines of railroad, whether such communication be by railroad, or by vehicular or pedestrian traffic, slow, difficult, unsafe and dangerous.

That the so-called "Coast" and "Valley" routes of the Southern Pacific Company, herein at times called the Southern Pacific, connecting Los Angeles with San Fransicso and with the San Joaquin and Sacramento Valleys, unite at Burbank about 12 miles north of said Southern Pacific Company's so-called Arcade Station in Los Angeles, and extend southerly along the east bank of the Los Angeles River to its juncture with the Arroyo Seco, which drains the territory to the northeast, in the vicinity of Pasadena; that at said Arroyo Seco, the said Southern Pacific Company's said line of railroad crosses from the east bank to the west bank of the Los Angeles River and thence continues southerly along the river to the North Broadway Viaduct; that the line then crosses under said viaduct and, leaving the river, proceeds southwest along North Spring Street
4 to the northern end of Alameda Street and thence southerly along Alameda Street at grade, crossing many important streets, to the Southern Pacific Company's Arcade passenger station just west of Alameda Street between Fourth and Sixth Streets; that the Southern Pacific Company's Sunset or El Paso route approaches the city of Los Angeles from the east and crosses the Los Angeles River along Alhambra Avenue and then turns south into Alameda Street at North Main Street, a short distance south of the north end of Alameda Street and proceeds thence southerly to the Arcade Station as do the trains from the north; and that south of said Arcade Station the Southern Pacific Company occupies Alameda Street at grade to the southerly boundary of the city with its line to San Pedro and Santa Ana.

That the main line of The Atchison, Topeka and Santa Fe Railway Company, herein at times called the Santa Fe, from the east through Pasadena follows the Arroyo Seco and crosses from the east bank to the west bank of the Los Angeles River just north of said North BroadwayViaduct; that the line thence passes under said Viaduct and proceeds thence southerly along the west bank of the river across Alhambra Avenue to said company's passenger station on the west bank of the river, just south of First Street; that an alternative route from San Bernardino joins the Los Angeles-San Diego line at Fullerton and enters the city from the southeast, crossing the river from the east bank

to the west bank south of Butte Street and following thence north along the west bank of the river to the Santa Fe's said passenger station; and that a local line of the Santa Fe from Redondo and San Pedro joins said last mentioned line near Butte Street.

That the main line of Los Angeles and Salt Lake Railroad Company, herein at times called the Salt Lake, enters the city from the southeast through a point called Hobart Junction; that said line formerly proceeded up the east bank of the river to the Salt Lake's former passenger station located on the east bank of the river, south of First Street, but that subsequent to the abandonment by the Salt Lake of its said passenger station on or about November 1, 1924, the Salt Lake, as a temporary matter, operates its passenger trains from the east bank to the west bank of the river at or about Butte Street, thence west along said street to a connection with the tracks of the Southern Pacific along Alemeda Street and thence north over and along said tracks at grade along Alameda Street to and into the Southern Pacific Company's said Arcade passenger depot; that one line of the Salt Lake continues from Butte Street north along the east bank of the river, passes under said North Broadway Viaduct and follows thence up the Arroyo Seco to Pasadena; that a branch of said last mentioned line crosses the Arroyo Seco to the north and terminates at Glendale, a suburb approximately 6 miles north of the Arcade station; and that another local line of the Salt Lake from the south serves Long Beach and San Pedro and joins the main line between Hobart Junction and the river.

That over their said lines of railroad the Southern Pacific, Santa Fe and Salt Lake transport into and out of the city of Los Angeles annually in excess of 2,250,000 passengers; that in the transportation of said passengers said carriers operate into and out of said city annually in excess of 12,000 arriving and an equivalent number of departing passenger trains.

That the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under said North Broadway Viaduct at the entrance to the city from the north, the two

former lines being located under said Viaduct along the west bank of the river and the latter line along the east
6 bank; and that the point at which said tracks of said carriers run under said North Broadway Viaduct is located only approximately three-fourths of one mile distant northerly from the so-called Plaza Area as described in the decisions of the Interstate Commerce Commission and the California Railroad Commission to which reference will hereinafter be made.

That the predominating passenger traffic of said carriers in the city of Los Angeles is to and from the north and east; that 69 per cent of all scheduled main line passenger trains enter Los Angeles by routes north of said Plaza Area; that 42 out of the 78 main line scheduled passenger trains daily pass under said North Broadway Viaduct and 12 run along Alhambra Avenue; that only 24 of said trains, being less than one-third enter the city from the south; and that 74 per cent, being nearly three-fourths, of all passengers use routes north of said Plaza Area.

V. That Alameda Street is the principal north and south street through the industrial section of the city of Los Angeles; that an enormous volume of east and west traffic, street and interurban electric, vehicular and pedestrian, must cross daily said street and the double-track main line of the Southern Pacific located and operated thereon; that north of the Arcade depot said tracks along Alameda Street are operated by the Southern Pacific and that south of said depot they are operated not merely by the Southern Pacific but also, since on or about November 1, 1924, by the Salt Lake in connection with its temporary use of said Arcade depot; that the presence along Alameda Street for practically its entire length of said double-track main line of the Southern Pacific at grade is a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west railroad, vehicular and pedestrian
7 traffic and that said situation is constantly becoming more aggravated; that said carriers have made frequent public admission of the necessity, in the public interest, of eliminating all railroad operations along said Alameda Street, except only industrial switching for freight.

That not merely the Southern Pacific but also the Santa Fe and the Salt Lake have their duties and responsibilities in connection with said Alameda Street situation.

That all persons coming to or going from the Santa Fe depot from or to points west of Alameda Street must cross the Southern Pacific tracks located and operated thereon and that the Santa Fe has its passenger depot so located that its passengers are obliged to go through said scene of danger in order to reach it.

That the same situation would be equally applicable to the Salt Lake if that carrier should return to its passenger grounds on the east bank of the Los Angeles river and that at the present time the Salt Lake, by running its passenger trains into and out of the Southern Pacific's Arcade station, under said temporary arrangement, along Alameda Street south of the Arcade station, has aggravated and is aggravating the condition along that part of Alameda Street.

VI. That the Salt Lake does not now own any passenger depot in the city of Los Angeles; that said carrier formerly owned and operated a passenger station on the east bank of the Los Angeles river, north of First Street; that the passenger station building at said location was a two-story frame building which was erected in 1891 at a cost of approximately $10,000.00; that said structure was inadequate to serve the needs of the traveling public and that its location was inconvenient and its access dangerous to
8 the public; that in the year 1924 a fire fortuitously did some damage to the second story of the building, whereupon the Salt Lake was authorized by the Railroad Commission of California to run its trains into the Arcade depot of the Southern Pacific Company as a temporary matter; that in its said order (Decision No. 13,923, Vol. 25, Opinions and Orders, Railroad Commission of California, p. 281) the said Railroad Commission expressly provided that the Salt Lake should not use the granting of said application either by way of defense or argument on the ground of capital expenditure or on any other ground against any order, or in any proceeding then or thereafter pending before said Commission or any other Commission, court or public tribunal providing for or looking toward railroad or terminal unification in the city of Los Angeles; that the Salt Lake accepted said order of said Railroad Commission, began its operations into said Arcade depot on or about November 1, 1924 and has continuously sub-

sequent to said date operated its Los Angeles passenger trains into and out of said Arcade passenger depot; that in order to reach said Arcade depot, the Salt Lake operates all its passenger trains at grade on and along Alameda Street from Butte Street on the south to said Arcade depot on the north, across many important public streets and that thereby the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street has been greatly accentuated.

That the Santa Fe's passenger station in the city of Los Angeles is located along the west bank of the Los Angeles river, south of First Street, and that the depot is a small brick building which was erected in 1893; that the total value of the building with all furniture, parking and paving, does not exceed $50,000.00; that the present structure is inadequate and does not meet the reasonable requirements of the traveling public; that the officials of the Santa Fe have on numerous occasions made public acknowledg-

9 ment of the inadequacy of the present passenger station and facilities and of the necessity for an adequate, up-to-date passenger station and that such station and facilities if provided by the Santa Fe independently without reference to a union passenger station, would cost approximately $1,182,317.00; that substantially all members of the public who have occasion to use the Santa Fe's passenger depot can do so only by crossing Alameda Street and the main line tracks of the Southern Pacific located thereon; and that the Santa Fe's said depot is located on a site which is inconvenient and difficult of access and dangerous to the public desiring to use said passenger depot.

That the Southern Pacific's Arcade passenger depot in the city of Los Angeles was constructed by said carrier in 1915 under authority of an order of the Railroad Commission of California (Decision No. 1090, Vol. 3, Opinions and Orders, Railroad Commission of California, pp. 927-30) made on a petition of said carrier; that as the result of public protests on the ground that the elimination of the Southern Pacific's railroad grade crossings on Alameda Street would be delayed or prevented by the construction of a passenger depot at said point, the Railroad Commission's order authorizing the demolition of the old Arcade passenger depot at said point and the erection of the pres-

ent depot contained an express provision "that the tearing down and abandonment of said old depot, and the taking up, relocating and placing of new trackage in connection with said new depot, or the approval of this commission therefor, shall never be used as a defense against the separation of grade crossings in the state of California"; that the public interest and the public safety urgently require the elimination from Alameda Street of all passenger operations and all freight operations of the Southern Pacific and the Salt Lake except only freight switching and that the only plan for such elimination consistent with the public convenience and necessity and the public safety is to change the location of the Southern Pacific's passenger depot from the present Arcade site to a site in the vicinity of the Plaza, near the northern entrance to the city, by which plan said trains will be kept off Alameda Street and the Alameda Street grade crossing problem will automatically be solved; that the waiting room of the Arcade depot is now overcrowded daily between the hours of 7 and 8 P. M. and that the building is rapidly becoming inadequate; and that changes and alterations in the building so as to make the same adequate for a number of years longer would cost approximately $500,000.00.

VII. That in order to provide adequate and sufficient passenger station facilities for the Southern Pacific, the Santa Fe and the Salt Lake in the city of Los Angeles, to promote the security, convenience and necessity of the passengers and employees of said carriers and to secure adequate service and facilities for the performance by said carriers, and each of them, of their obligations as common carriers, it is necessary and the public safety, convenience and necessity require, that a union passenger station and facilities incidental thereto be erected by said carriers in the city of Los Angeles in the Plaza Area hereinafter referred to and that in connection therewith said carriers make such improvements and changes in their existing facilities and arrange for such joint or other use of tracks or terminal facilities now constructed or to be constructed within the city of Los Angeles as may be reasonably neces-

sary and incidental to the construction and use of said union passenger station.

11 That if such union passenger station be not constructed, it would nevertheless be necessary for said carriers to expend individually, in the immediate future, several million dollars for the purpose of establishing adequate and convenient passenger station facilities in the city of Los Angeles.

That it is greatly in the public interest and in the interest of said carriers themselves that these expenditures, instead of being made in a competitive and largely wasteful manner, each carrier seeking primarily to advance its own competitive interest or the interest of itself and its particular associates, should be made in a unified manner and in such a way as to avoid duplicate investments and operating expenses, prevent wasteful expenditures and serve the public interest.

VIII. That on April 26, 1921, the Railroad Commission of California, following an exhaustive investigation by its own engineers and numerous hearings extending over a period of several years, in a number of consolidated formal proceedings, rendered a decision (Decision No. 8901, Vol. 19, Opinions and Orders, Railroad Commission of California, p. 740), in which, among other matters, the California Commission ordered the Southern Pacific, the Santa Fe and the Salt Lake to file plans for the erection of a union passenger station at some site within a defined area in the vicinity of the Plaza, in the city of Los Angeles, which area was specified as being bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River; and that said area is herein at times referred to as the Plaza Area.

That, following a rehearing had on the petition of the railroad companies, the California Commission on December 6, 1921, rendered a decision (Decision No. 9838, Vol. 20, Opinions and Orders, Railroad Commission of Cali-

12 fornia, p. 937) modifying in certain respects not here material its former decision but ordering the carriers to proceed to secure sufficient land within said Plaza Area for a union passenger station, to prepare and submit plans for such union station, passenger terminal and necessary facilities, and upon approval of the plans by the Com-

mission, to proceed with the construction of such station and terminal.

IX. That the Southern Pacific, the Santa Fe and the Salt Lake thereupon each took the Railroad Commission's said decision and order to the Supreme Court of California by writs of review; that in a case entitled *The Atchison, Topeka and Santa Fe Railway Company* v. *Railroad Commission of California,* 190 Cal. 214, the Supreme Court of California, on December 19, 1922, held that the California Railroad Commission had lost its jurisdiction over the union passenger terminal situation in Los Angeles and that by virtue of the provisions of the Transportation Act of 1920, jurisdiction had vested exclusively in the Interstate Commerce Commission.

That, after reviewing certain provisions of the Act to Regulate Commerce, as amended by the Transportation Act of 1920, and commenting on a number of decisions, the Supreme Court of California said (p. 226):

"It is clear from the foregoing that Congress has not only vested jurisdiction in the Interstate Commerce Commission over the question of the extension of terminal facilities, such as contemplated by the order of the Railroad Commission in the case at bar, but has also prohibited the railroads from making such improvements without the consent of the Interstate Commerce Commission. This being true, Congress has fully occupied the field of regulation of such matters and the power of the state commission has thereby been terminated."

13 That the Supreme Court of California thereupon annulled the Railroad Commission's order and concluded as follows (p. 377):

"From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce Law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of

California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject sought by it to be exercised in the several proceedings before it and by the order presented for review herein."

That the Railroad Commission of California thereupon took said decision by certiorari to the Supreme Court of the United States in a proceeding entitled *Railroad Commission of California* vs. *Southern Pacific Company.*

X. That, following said decision by the Supreme Court of California, the City of Los Angeles, the relator herein, thereafter, in March, 1923, filed with the Interstate Commerce Commission its formal complaint in Docket No. 14,778 of said Commission, entitled "City of Los Angeles, Complainant, vs. Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, and Union Pacific Railroad Company, Defendants."

That in and by its said complaint in said Docket, the City of Los Angeles, after setting forth the facts on which it relied for relief, asked the Interstate Commerce Commission to make an order or orders commanding said defendants, as their interests may respectively appear, to take action, among other matters, as follows:

14 "(*d*) To construct and thereafter operate and use a union passenger depot and appurtenances on a site within that portion of the city of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, and to acquire such land, if any, as may be necessary for said purpose;

"(*e*) To abandon the operation of said main line tracks of Southern Pacific Railroad Company on said Alameda Street from College Street to East Fifteenth Street, inclusive, for the operation of passenger trains and also freight trains except local freight switching; and

"(*f*) To construct or acquire such structures, facilities, tracks and other property, to make such extensions or abandonments of railroad lines or other facilities or of the operation thereof, and to arrange for such joint or other

use of tracks or terminal facilities now constructed or to be constructed, within the city of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the matters hereinbefore and in this prayer specified, or any thereof."

That in its said prayer for relief the city of Los Angeles also asked the Interstate Commerce Commission to make such other or further order or orders in furtherance of the relief asked for as the Commission might find to be just and equitable and in the public interest.

That a correct copy of the complaint of the city of Los Angeles in said Docket No. 14,778 is attached hereto marked Exhibit A and made a part hereof as fully and with the same effect as if set out here in full; that Exhibits 2, 3 and 4 to said complaint, which are not here reproduced, may be found as follows:

Exh. No. 2, Decision No. 8901, rendered by the Railroad Commission of California on April 16, 1921—Vol. 19, Opinions and Orders, Railroad Commission of California, p. 740.

Exh. No. 3, Decision No. 9838, rendered by the Railroad Commission of California on December 6, 1921—Vol. 20, Opinions and Orders, Railroad Commission of California, p. 937.

Exh. No. 4, Decision rendered by the Supreme Court of California on December 19, 1922, in *The Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, and that reference is hereby respectfully made to each of said 3 decisions as thus reported.

XI. That thereafter, on April 7, 1924, the Supreme Court of the United States made its decision in said proceeding entitled *Railroad Commission of California* v. *Southern Pacific Company,* 264 U. S. 331, and in said decision affirmed said judgment of the Supreme Court of California, and held that before an order of any public authority directing the construction of a union passenger depot under the circumstances existing in the city of Los Angeles could be effective it would be necessary to secure from the Interstate Commerce Commission certain specified certificates of public convenience and necessity.

That in said decision, the Supreme Court declared that the question before the Court was as follows (p. 341):

"Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920."

That in the concluding paragraphs of its decision, the Supreme Court of the United States said (p. 347):

"We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an order to provide, maintain and use a union station; that a hearing followed, and that, pending the decision in this court, the matter is held under consideration.

16 "For the reasons given, we think that the course taken by the City of Los Angeles was the correct one."

That the petition of the City of Los Angeles to which the Supreme Court of the United States thus referred in its said decision was and is the complaint of the City of Los Angeles in said Docket No. 14,778, copy whereof is attached to this Petition as Exhibit A.

That the Supreme Court of the United States then concluded its said decision as follows (p. 348):

"Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto, as ordered by the State Railroad Commission.

"The judgment of the Supreme Court of California is affirmed."

XII. That thereupon further evidence was taken by the Interstate Commerce Commission in said Docket No. 14,778, the matter was submitted, briefed and argued, and thereafter, on July 6, 1925, the Interstate Commerce Commission rendered its decision therein (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421).

That after a painstaking and exhaustive review of the entire record, the Interstate Commerce Commission made the following findings of fact (p. 459):

"Upon a consideration of all the facts of record we find:

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

17 "2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

"3. That the present and future public convenience and necessity require and will require (*a*) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenience and proper operation of such union passenger station and terminal.

"4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

"5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of

terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragarph 3 above.

"6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business."

That the Commission, however, refused to give consideration to the evidence for the purpose of determining whether it should make its order *requiring* any of the defendant carriers to construct and operate a union passenger station, as prayed for by the city of Las Angeles, on the ground that the Commission did not have jurisdiction to
18 make such order;

That in this connection, the Commission said (p. 426):

"Careful study of the Interstate Commerce Act convinces us that Congress has not conferred upon us authority to require carriers to construct union passenger stations under conditions such as are here present."

That on the same subject the Commission further said (p. 430):

"We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14,778. To make the record clear, we repeat that no question of discrimination or preference is presented here; and that under the issue framed in the complaint in No. 14,788 we will give no consideration to matters shown of

record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants."

That the Commission made its order denying the application in Finance Docket No. 3,569, being an application of the Southern Pacific and the Salt Lake for permission to make effective a plan under which the Arcade depot of the Southern Pacific would be used as a *joint* depot by that Company and the Salt Lake, and concluded its decision as follows:

"We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record."

19 That a correct copy of the said decision of the Interstate Commercee Commission rendered on July 6, 1925 in said Docket No. 14,778 is attached hereto, marked Exhibit B and made a part hereof, as fully and with the same effect as if set out here in full.

XIII. That the Railroad Commission of California thereupon reopened the matters pending before it for further consideration and determination and after receiving voluminous additional testimony rendered a further decision on

July 8, 1927 (Decision No. 18,593, Vol. 30, Opinions and Orders, Railroad Commission of California, p. 151).

That in said decision, the California Commission made findings of fact substantially identical with the 6 findings of fact theretofore made by the Interstate Commerce Commission and hereinbefore set forth and added the following 4 further findings:

"(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, of a union passenger station within that portion of the city of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said passenger station.

"(8) That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14788, to which reference has been made hereinabove.

"(9) That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in or opinion, impairing the ability of these carriers to perform their respective duties to the public.

"(10) That said construction ought reasonably to be made."

That the portion of the city of Los Angeles referred to in siad Finding No. 7 is the identical area hereinbefore referred to as the Plaza Area and that a copy of Commission's Exhibit No. 4-b referred to in said Finding No. 8 is

attached to Exhibit C attached to this petition, to which exhibit reference will hereinafter be made.

That the California Commission thereupon made its order requiring the Southern Pacific, the Santa Fe and the Salt Lake to construct a union passenger station within said Plaza Area at a cost of approximately $10,000,000.00 and in substantial compliance with the plan outlined in said Commission's Exhibit 4-b, and to perform specified other acts and provided that said order should become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates of public convenience and necessity.

That a correct copy of the said decision of the California Railroad Commission rendered on July 8, 1927, is attached hereto and marked Exhibit C and that attached thereto is a copy of said Commission's Exhibit 4-b and that the same are made a part hereof as fully and with the same effect as if set out here in full.

21 XIV. That thereupon the city of Los Angeles filed with the Interstate Commerce Commission in said Docket No. 14,778 its Petition dated July 25, 1927 in which petition the city of Los Angeles reviewed the provisions of the Act to Regulate Commerce, referred to the decisions of the Commission and the courts relied upon by the city of Los Angeles, including the decision of the Commission in *Chamber of Commerce, Breckenridge, Texas,* v. *Wichita Falls, Ranger & Fort Worth R. Co.,* 109 I. C. C. 81 and the decision of the Supreme Court of the United States in *Alabama & Vicksburg Railway Company* v. *Jackson & Eastern Railway Company,* 271 U. S. 244, each of which decisions had been rendered subsequent to the Commission's said decision of July 6, 1925, in the Los Angeles Passenger Terminal Cases, in justification of the City's position that the Interstate Commerce Commission has full power and authority to make the order requested by the City *requiring* the Southern Pacific, the Santa Fe and the Salt Lake to construct and operate a union passenger depot in the said Plaza Area in the city of Los Angeles and again prayed that such order be made.

That in its said Petition, the city of Los Angeles asked that the Interstate Commerce Commission take action as follows:

"1. Issue its certificates in accordance with its Findings Nos. 1 to 6, inclusive, heretofore made herein and appearing in 100 I. C. C. 459-460.

"2. Make its order directing the defendants Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company, and each of them, to construct and thereafter operate a union passenger station and appurtenances within that portion of the City of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, together with such tracks, connections and all other terminal facilities, and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, and to acquire such land, if any, as may be necessary for said purpose, at a total cost of approximately ten millions ($10,000,00-.00) in substantial compliance with the plan outlined in "Exhibit B" attached to this petition.

"3. Make such additional findings and orders, issue such further certificates and grant such other and further relief in furtherance of the relief herein asked for as the Commission may find to be just and equitable and in the public interest."

That "Exhibit B" referred to in said Paragraph 2 was and is the plan hereinbefore referred to as Commission's Exhibit 4-b.

That a correct copy of the said Petition of the city of Los Angeles, dated July 25, 1927, is attached hereto, marked Exhibit D and that the same is made a part hereof as fully and with the same effect as if set out here in full; and that Exhibit A to said Petition, which exhibit is not here reproduced, is Exhibit C attached to this Petition.

XV. That after the filing of further briefs and oral argument, the Interstate Commerce Commission on May 8, 1928 rendered its decision on said Petition of the city of

Los Angeles and on a somewhat similar Petition filed in the same Docket No. 14,778 by the Railroad Commission of California.

That in its said decision the Interstate Commerce Commission adhered to the conclusions expressed in its said decision of July 6, 1925 (100 I. C. C. 421; Exhibit B to this Petition), found that the additional findings of the California Railroad Commission numbered 7 to 10 inclusive, and hereinbefore in this Petition set forth, find sufficient support in the record and issued its certificates as requested in Paragraph 1 of the prayer of the city of Los Angeles hereinbefore set forth.

That the Commission, however, in the majority opinion, again refused to take the final step of ordering the
23 Southern Pacific, the Santa Fe and the Salt Lake to construct a union passenger depot in the Plaza Area, as prayed for by the city of Los Angeles, and to consider the evidence bearing on the propriety of making such order, and that the Commission again based its refusal to make such order or to consider the evidence hearing thereon, on its view that, as a matter of law, it does not have the jurisdiction, under the Act to Regulate Commerce, to make such order, and that in this connection, the majority opinion says:

"Re-examination of the whole subject again leads to the conclusion that under existing law we are not empowered to require the construction of a union passenger station of the character sought by the complaint."

That the Commission thereupon made its order reading in part as follows:

"*It is ordered,* that the applications in No. 14,778, in so far as they seek an order requiring the construction of a union passenger station and terminal in Los Angeles, Calif., be, and it is hereby, denied."

That Commissioner Eastman filed an opinion, concurring in part with the majority opinion but holding that the order requiring the construction of said union passenger depot as prayed for by the city of Los Angeles should have been made; that Commissioners Lewis and McManamy joined

in said view and expression; that in said opinion Commissioner Eastman after reviewing the provisions of the Act to Regulate Commerce and a number of the decisions on which the city of Los Angeles relies in this connection, held that the order for which the City prayed should have been issued and said:

"My conclusion is that, considering the various statutory provisions together, we probably have power to enter the desired order. But this is not the only reason for such action. Certainly a conclusion that we have no power to enter an order is at least subject to much doubt.
24 Certainly, also, the carriers propose to litigate this case as long and as vigorously as they can. The least possible delay in determining legal questions and arriving at an end of litigation will result, I believe, if we, as well as the State commission, enter an order. This aspect of the matter was strongly and persuasively presented by complainants. In view of the manifest uncertainty as to what the law is, it is a course which we are quite justified in following and the one which is most likely to result in a needed clarification of the law."

That a correct copy of the Interstate Commerce Commission's said decision, certificate and order of May 8, 1928 is attached hereto, marked Exhibit E and made a part hereof as fully and with the same effect as though set out here in full.

XVI. That Paragraph 3 of Section 3 of the Act to Regulate Commerce, as amended by the Transportation Act of 1920, reads as follows:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

That Paragraph 4 of Section 3 of the Act to Regulate Commerce, as added by the Transportation Act of 1920, reads as follows:

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the abiltiy of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the tems fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

That Paragraph 21 of Section 1 of the Act to Regulate Commerce, as added by the Transportation Act of 1920, reads as follows:

"(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: Provided, That

no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

That Section 12 of the Act to Regulate Commerce reads in part as follows:

26 "and the Commission is hereby authorized and required to execute and enforce the provisions of this Act."

XVII. That each finding of fact contained in the said decisions of the Interstate Commerce Commission of July 6, 1925 and May 8, 1928 and in said decision of the Railroad Commission of California of July 8, 1927 is true and is shown by the evidence before the Interstate Commerce Commission in said Docket No. 14,778; that a union passenger station constructed, operated and maintained by the Southern Pacific, the Santa Fe and the Salt Lake on said Plaza area, as prayed for by the city of Los Angeles in said Docket No. 14,778, is a reasonable, proper and necessary facility for the receiving, forwarding and delivering of passengers to and from the several lines of the Southern Pacific, the Santa Fe and the Salt Lake and lines connecting therewith and that the present and future public convenience and necessity require such construction, maintenance and use by said carriers and also such abandonments and extensions of lines of railroad as are incidental thereto and will result therefrom, and that the expense involved in said construction, maintenance and use of said union passenger station and appurtenances and in said abandonments and extensions of railroad lines and facilities will not impair the ability of said carriers or any thereof to perform their duty to the public.

That the city of Los Angeles, by formal resolution of its City Council now in full force and effect, stands ready to grant such franchises or permits and to enact such ordinances for the opening or closing of all such public street areas as may be necessary to make fully effective the said order for which it prays in said Docket No. 14,778 before the Interstate Commerce Commission.

27 XVIII. That the carrying into effect of the union passenger depot order requested by the city of Los Angeles, as aforesaid, would require to a substantial extent the joint use of existing railroad terminal facilities in or adjacent to the city of Los Angeles, including the following uses—the use by the Southern Pacific passenger trains from the north of the Santa Fe main line tracks on the west bank of the Los Angeles River from a point north of the North Broadway Viaduct as far south as Aliso Street; the use by the Salt Lake passenger trains from Pasadena of the Santa Fe's tracks on the west bank of the river between the same points; the use by the Salt Lake passenger trains from the south of the Santa Fe's tracks from Hobart Junction on the south to the site of the proposed union passenger depot on the north, a total distance of approximately 3 miles; and the use by the Southern Pacific of the Salt Lake's tracks on the east bank of the Los Angeles river from Alhambra Avenue southerly to Butte Street and thence west over the Salt Lake's Butte Street line to Alameda Street.

That the site for the proposed union passenger station itself, within said Plaza Area, as said site is shown on said California Railroad Commission's Exhibit 4-b, consists of a total area of 37 acres, of which area 26.87 acres, being more than two-thirds of the total area, is already railroad terminal land owned by the Southern Pacific and to a small extent by the Santa Fe; that the Southern Pacific's portion of said land, being all except a small portion owned by the Santa Fe, was acquired by the Southern Pacific after the Supreme Court of the United States had rendered its said decision of April 7, 1924; that the railroad terminal land already so owned by said carriers includes the entire land on which the head house of the proposed union pas-

28 senger station is to be located and almost all the land on which the station tracks are to be constructed; that the land remaining in private ownership is only a

small part required for station trackage together with some land west of Alameda Street desired for an appropriate approach to the head house, and is only land needed to "round out" the project.

That of the railroad terminal properties which would be jointly used in connection with the union passenger depot plan as to which the city of Los Angeles has requested said order, the entire trackage along the Los Angeles River and nearly all the land on which the union station structures are to be erected are already in the ownership of the Southern Pacific, the Santa Fe and the Salt Lake, respectively; that the joint use of said terminal facilities in connection with and as a part of said union passenger depot project would be in the public interest and would be practicable and would not substantially impair the ability of the carrier owning or entitled to the enjoyment of the same to handle its own business.

XIX. That the carrying into effect of the union passenger depot plan requested by the city of Los Angeles would require to a substantial extent the extension by the Southern Pacific, the Santa Fe and the Salt Lake, or one or more of them, of their line or lines of railroad to and into the site of the proposed union passenger depot in said Plaza area and in connection with track rearrangements incidental to the use of said union passenger depot and also the abandonment by said carriers, or one or more of them, of the use of the Southern Pacific tracks on and along Alameda Street except for freight switching at night and of other
29 tracks incidental to the use of said union passenger depot.

XX. That the aforesaid refusal of the Interstate Commerce Commission to consider the evidence in said Docket No. 14,778 for the purpose of determining whether the Commission should issue the order requested by the city of Los Angeles requiring the construction and use in the Plaza Area in the city of Los Angeles of a union passenger station by the Southern Pacific, the Santa Fe and the Salt Lake and the Commission's aforesaid order denying the said Application dated July 25, 1927 of the city of Los Angeles in so far as it seeks an order requiring the construction of a union passenger station and terminal in the city of Los

Angeles where each based solely on a matter of law, namely, on the Commission's opinion that it does not have the power, authority and jurisdiction to give such consideration to the evidence or to make such order; that in entertaining said opinion and making said order the Commission was and is mistaken as a matter of law; that as a matter of law the Commission does have the power, authority and jurisdiction to consider said evidence for the purpose of determining whether it should issue the order as prayed for requiring the construction and use of said union passenger station and thereafter to make an appropriate order based on said evidence; and that, as a matter of law, it is the duty of the Interstate Commerce Commission to give consideration to such evidence and thereupon to issue such order as the facts and the merits justify and require.

XXI. That whenever this Petition contains an allegation on a question of fact or a reference to any finding of fact made by the Interstate Commerce Commission, or by the California Railroad Commission, such fact appears and is shown by the evidence in the record before the Interstate Commerce Commission in said Docket No. 14,778.

XXII. That Petitioner has no plain, speedy or adequate remedy in the ordinary course of law.

Wherefore relator prays that this Honorable Court grant an order for the issuance of a preemptory writ of mandamus, commanding and directing the respondent to forthwith consider the evidence in said Docket No. 14,778 for the purpose of determining whether respondent should issue an order requiring the construction and use of a union passenger station in the city of Los Angeles by the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company as prayed for by said city of Los Angeles in said Docket No. 14,778 and thereafter to make such order as the facts and the merits justify and require, or, if the Court be not minded to issue its peremptory writ, then for an alternative writ commanding respondent to appear before the Court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the respondent to perform

said acts, and that this Court grant such other, further or different relief as to the Court shall seem proper. This is the first application for a writ of mandamus in
31 this cause.

Dated at the city of Washington, District of Columbia, this 12 day of July, 1928.

JESS E. STEPHENS,
*City Attorney, City of Los Angeles,*
*City Hall, Los Angeles.*

MAX THELEN,
*Special Counsel for Relator,*
*Balfour Building,*
351 *California Street,*
*San Francisco, Cal.*

EDWIN C. BLANCHARD,
*Associate Counsel for Relator,*
404 *Southern Building,*
*Washington, D. C.*

32 STATE OF CALIFORNIA,
*County of Los Angeles, ss:*

Jesse E. Stephens, being first duly sworn, deposes and says: That he is the City Attorney of the City of Los Angeles, the relator in the above entitled proceeding and makes this verification in behalf of said relator; that he knows the contents of said petition; and that the facts therein alleged are true.

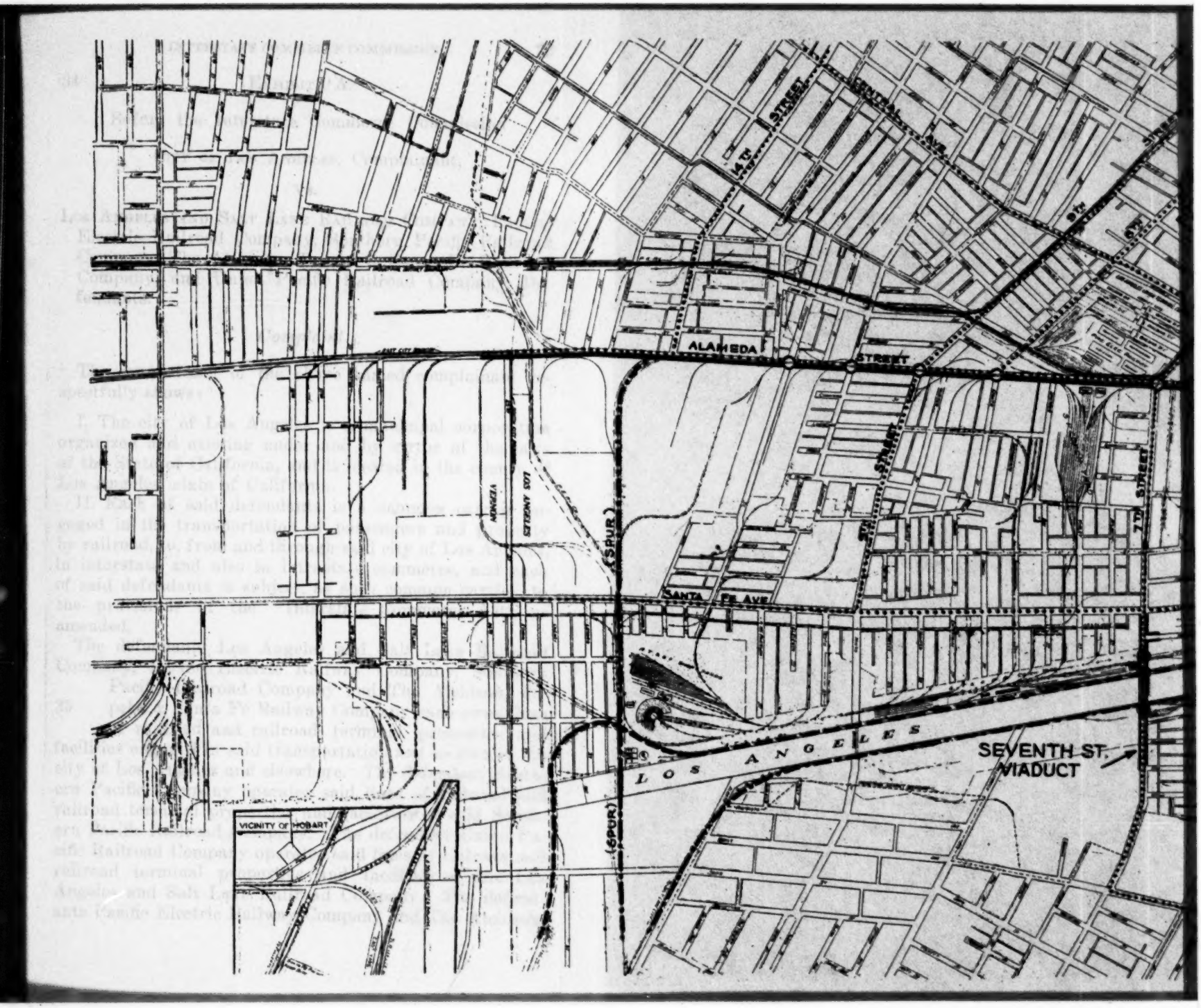
JESS E. STEPHENS.

Subscribed and sworn to before me this 14th day of June, 1928.

[SEAL.] DONNELL G. MONTGOMERY,
*Notary Public in and for the County*
*of Los Angeles, State of California.*

My commission expires Jan. 29, 1929.

(Here follows diagram marked page 33.)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SANTA FE AVE
LOS ANGELES
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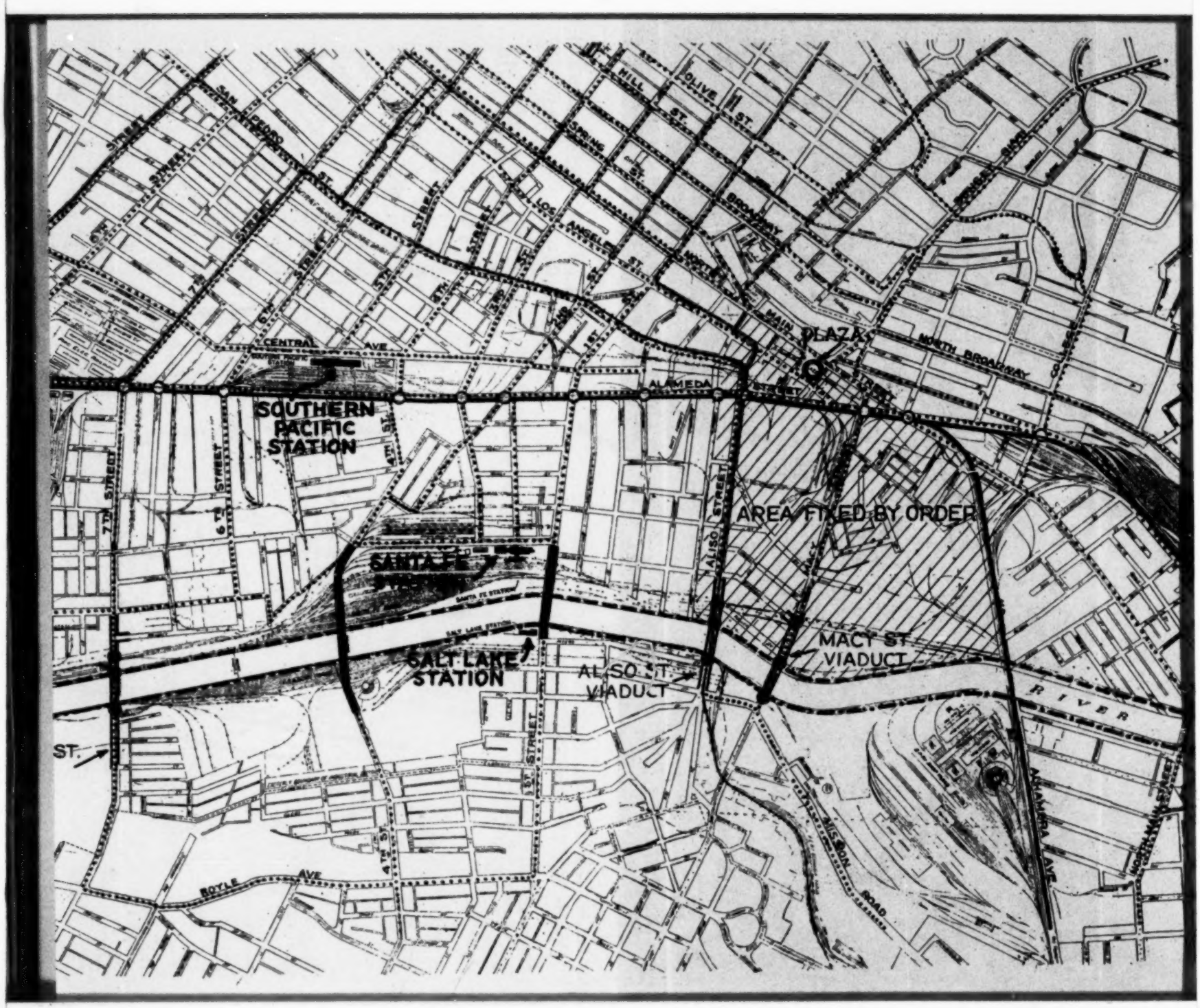
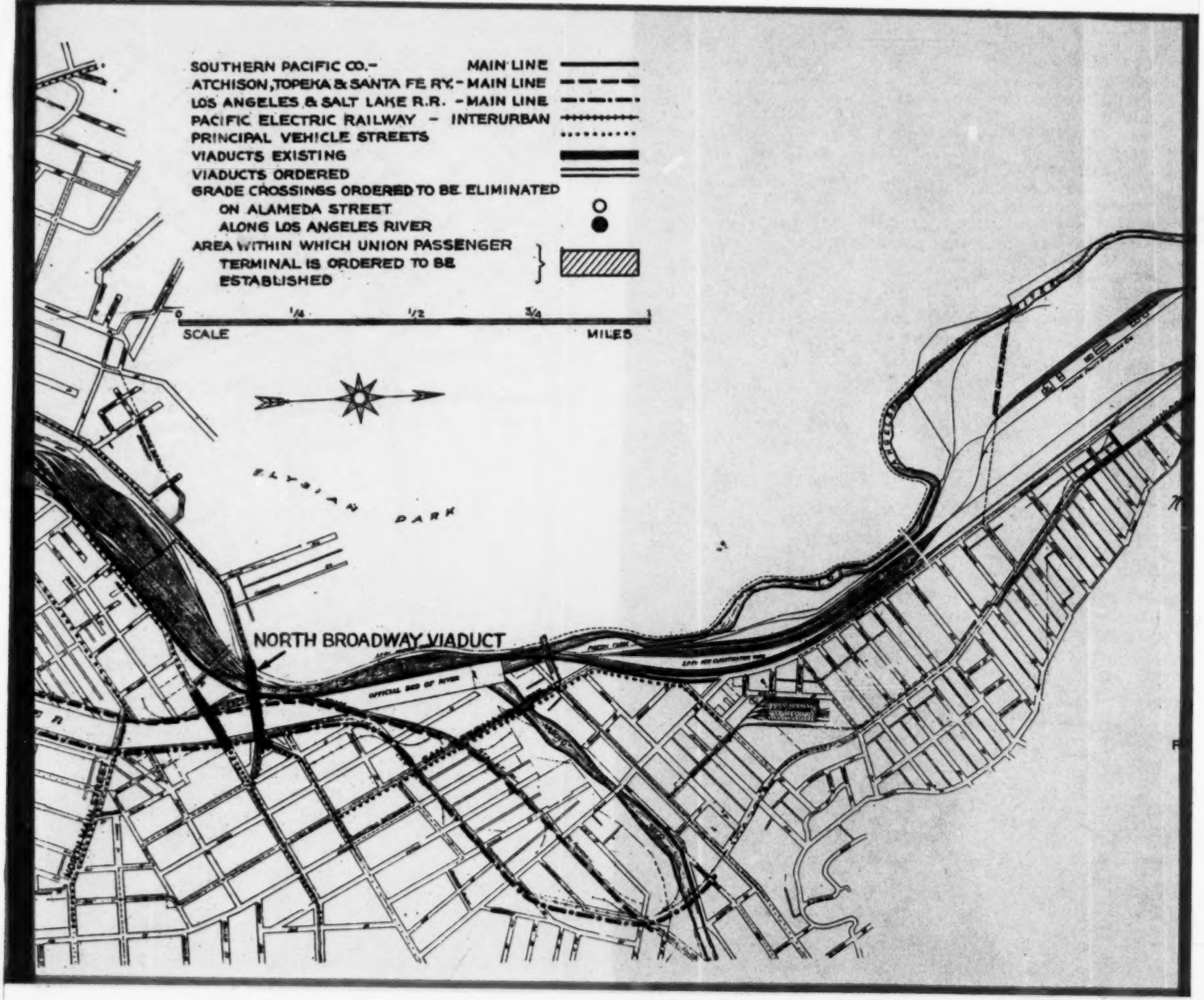
(SPUR)
LOS ANGELES
MINGEA
7TH STREET


SOUTHERN PACIFIC STATION
SANTA FE
SALT LAKE STATION
AREA FIXED BY ORDER
MACY ST VIADUCT
ALISO ST VIADUCT
MAIN PLAZA
ALAMEDA
CENTRAL AVE
NORTH BROADWAY
HILL ST.
OLIVE ST.
SPRING ST.
BROADWAY
SAN PEDRO STREET
LOS ANGELES ST.
7TH STREET
6TH STREET
5TH STREET
4TH STREET
3RD STREET
2ND STREET
1ST STREET
ALISO STREET
MACY STREET
RIVER
ARCHAMBEAU AVE
MISSION ROAD
BOYLE AVE
4TH ST.
ST.


SOUTHERN PACIFIC CO.- MAIN LINE
ATCHISON, TOPEKA & SANTA FE RY.- MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
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1/4
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SCALE
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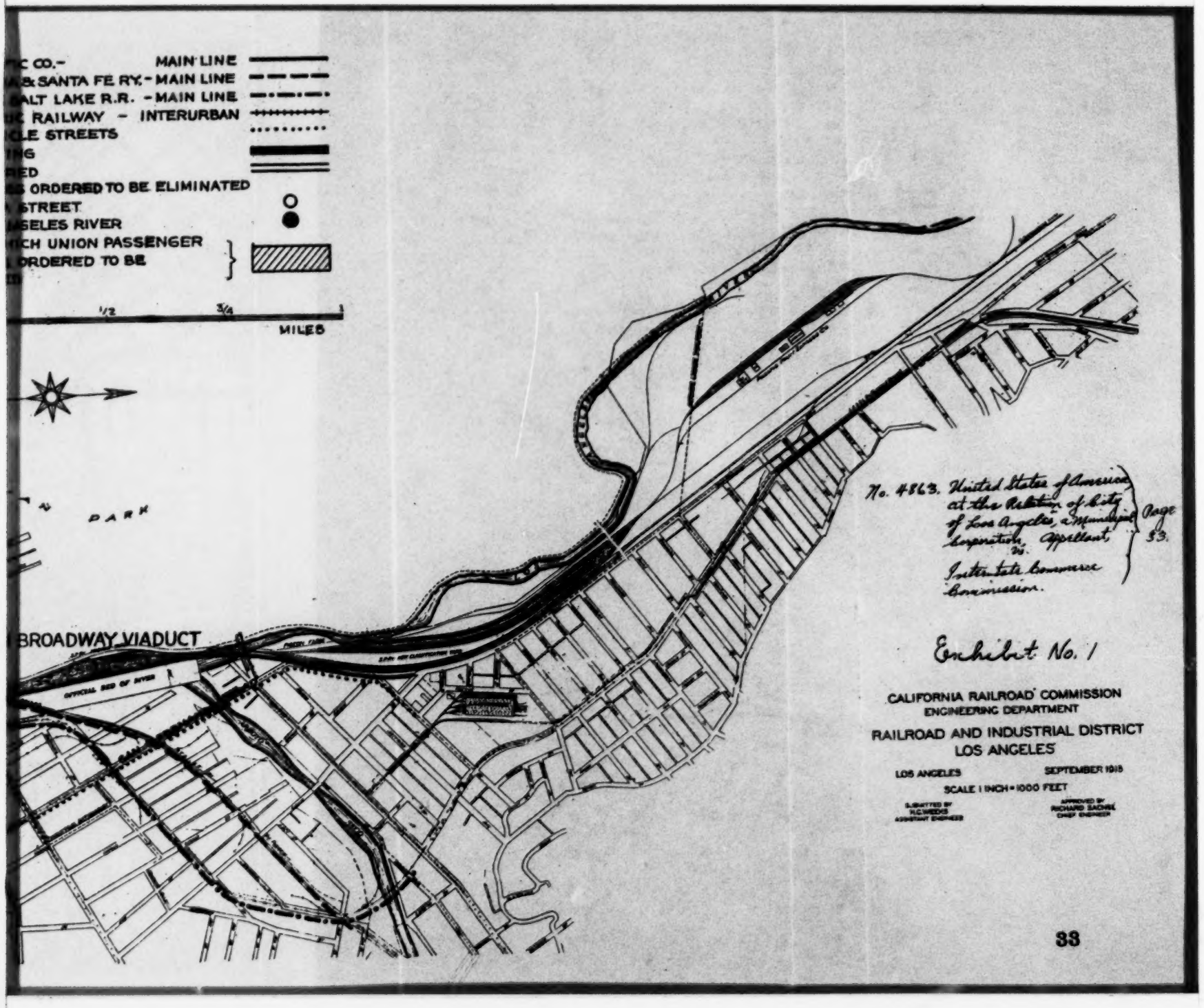
ELYSIAN PARK
NORTH BROADWAY VIADUCT


C CO.- MAIN LINE
& SANTA FE RY. - MAIN LINE
SALT LAKE R.R. - MAIN LINE
RAILWAY - INTERURBAN
LE STREETS
NG
ED
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STREET
GELES RIVER
CH UNION PASSENGER
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MILES
PARK
BROADWAY VIADUCT
OFFICIAL BED OF RIVER
No. 4863. United States of America at the Relation of City of Los Angeles, a Municipal Corporation, Appellant, vs. Interstate Commerce Commission.
Page 53.
Exhibit No. 1
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
RAILROAD AND INDUSTRIAL DISTRICT
LOS ANGELES
LOS ANGELES
SEPTEMBER 1918
SCALE 1 INCH = 1000 FEET
SUBMITTED BY H.C. WEEKS ASSISTANT ENGINEER
APPROVED BY RICHARD SACHSE CHIEF ENGINEER

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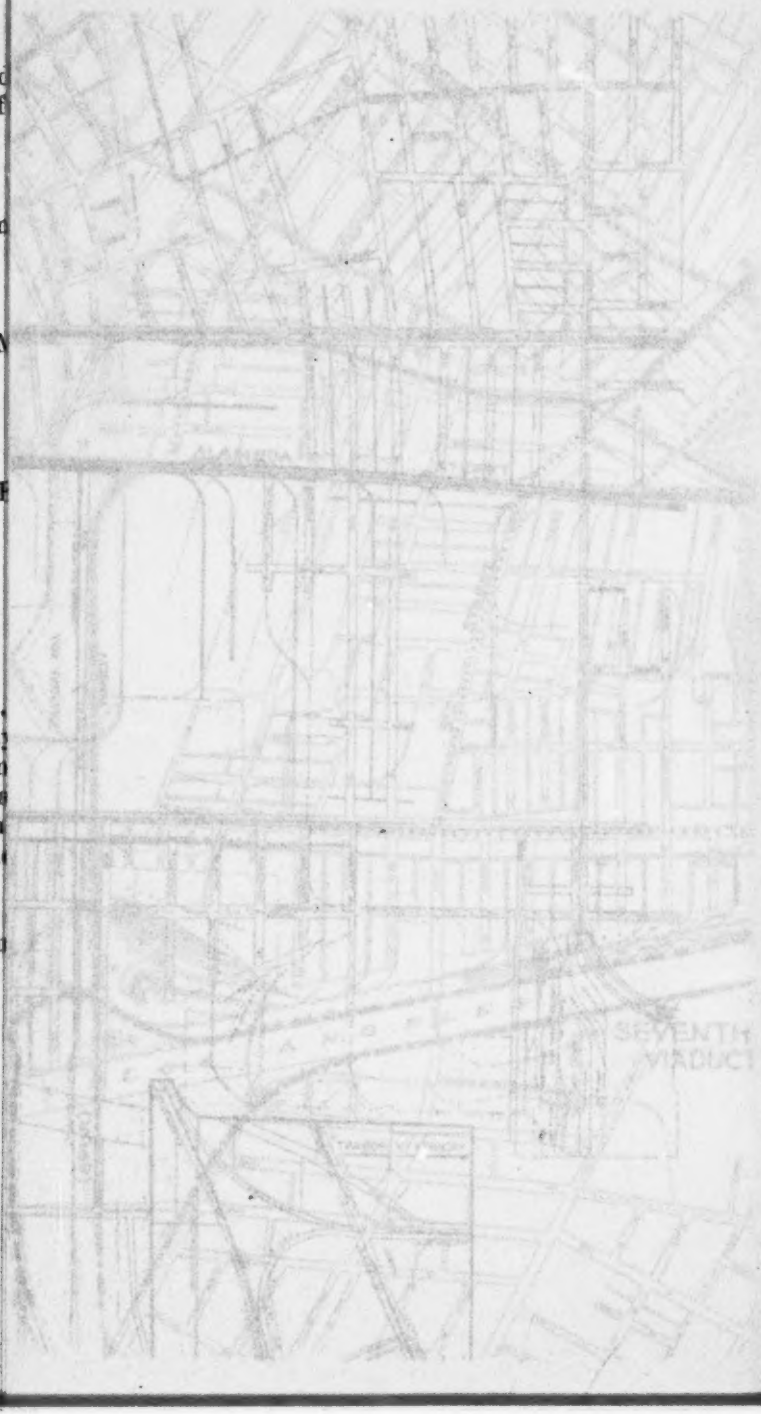

34 EXHIBIT "A."

Before the Interstate Commerce Commission

CITY OF LOS ANGELES, Complainant,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY, PACIFIC Electric Railroad Company, Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railroad Company, and Union Pacific Railroad Company, Defendants.

*Complaint.*

The complainant of the above named complainant respectfully shows:

I. The city of Los Angeles is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is located in the county of Los Angeles, state of California.

II. Each of said defendants is a common carrier engaged in the transportation of passengers and property by railroad, to, from and through said city of Los Angeles, in interstate and also in intrastate commerce, and each of said defendants is subject, as such common carrier, to the provisions of the "Interstate Commerce Act" as amended.

The defendants Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Railroad Company and The Atchison, To-
35 peka & Santa Fe Railway Company each owns lines of railroad and railroad terminal properties and facilities engaged in said transportation and located in the city of Los Angeles and elsewhere. The defendant Southern Pacific Company operates said lines of railroad and railroad terminal properties and facilities of said Southern Pacific Railroad Company. The defendant Union Pacific Railroad Company operates said lines of railroad and railroad terminal properties and facilities of said Los Angeles and Salt Lake Railroad Company. The defendants Pacific Electric Railway Company and The Atchison,

Topeka & Santa Fe Railway Company operates said lines of railroad and railroad terminal properties and facilities respectively owned by them, as aforesaid.

Opposite the first page of this complaint will be found a map showing the location of the lines of railroad of the defendants herein, in the city of Los Angeles, which map is marked Exhibit No. 1 and made a part hereof.

III. The railroad lines of all of said defendants (other than Pacific Electric Railway Company), within the city of Los Angeles have been constructed and are being operated at grade in a general northerly and southerly direction through said city, across many of the most important public streets of said city. Said railroad lines separate important and populous sections of the city of Los Angeles known as Boyle Heights and East Los Angeles, and also important and populous communities east of Los Angeles, from the business and residence center of the city of Los Angeles located west of said lines of railroad. They make intercommunication between the portions of the city of Los Angeles and other communities on either side of said lines of railroad, whether such communication be by rail-
36 road, or by vehicular, or pedestrian traffic, slow, diffiicult, unsafe and dangerous.

The line of railroad of said Southern Pacific Railroad Company runs in a general northerly and southerly direction longitudinally through the city of Los Angeles at grade on and along Alameda street, one of the principal thoroughfares of said city. The operation of said line of railroad on and along said Alameda street delays, hinders and makes unsafe and dangerous traffic by street cars, vehicles and pedestrians crossing said Alameda street on and along many important streets of said city. The operation of said line of railroad of the Southern Pacific Railroad Company on and along said Alameda street has long constituted and now constitutes a constant source of delay and danger to thousands of citizens of Los Angeles and eleswhere who find it necessary daily to cross said lines of railroad on Alameda street.

The line of railroad of said The Atchison, Topeka & Santa Fe Railway Company is constructed and operated at grade on and along the west bank of the Los Angeles River through the city of Los Angeles in a general north-

erly and southerly direction. The line of railroad of said Los Angeles and Salt Lake Railroad Company is constructed and operated at grade on and along the east bank of said Los Angeles River through the city of Los Angeles in a general northerly and southerly direction. Said lines of railroad of said two companies cross at grade numerous important public streets of the city of Los Angeles, along which there is at said points of crossing a very heavy daily traffic by interurban electric railroad, street car railroad, other passenger and freight vehicles, and on foot.

37 The Pacific Electric Railway Company operates a large number of electric interurban trains daily between the city of Los Angeles and important cities in the eastern portion of Los Angeles County, including Pasadena, Alhambra, San Gabriel and South Pasadena, and in so doing crosses at grade said lines of railroad of said defendants Los Angles and Salt Lake Railroad and Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, and Southern Pacific Railroad Company, within said city of Los Angeles. Said crossings are a constant menace and danger to the thousands of passengers and employees traveling daily on the line of said Pacific Electric Railway Company between the main business district of the city of Los Angeles and said cities located in the easterly portion of said Los Angeles county, and also to the passengers and employees being transported on and along said lines of railroad across which said Pacific Electric Railway Company thus operates at grade.

Each and every crossing at grade hereinbefore referred to, whether between railroad lines and public streets or between railroad lines and railroad lines, constitutes a grave and constantly increasing menace and danger to the safety of the public traveling on and along said public streets and of the passengers and employees traveling on said railroad lines in both interstate and intrastate commerce, and constitutes a constant hindrance and delay to the public traveling by railroad lines, vehicles or on foot between those portions of the city of Los Angeles and points beyond which are located on the westerly and easterly sides, respectively, of said lines of railroad. Said railroad grade crossings have been the cause of many accidents and collisions which have been destructive of the

lives and property of the people of the city of Los Angeles and visitors to that city, and also of property of
38 said defendants engaged in both interstate and intrastate commerce.

Said defendants have on numerous occasions, particularly during the course of the proceedings before the Railroad Commission of California, hereinafter referred to, publicly admitted the public menace and danger which is caused by said railroad crossings at grade and have conceded that said crossings, including particularly said crossings of the Southern Pacific Railroad Company, on and along said Alameda street, said crossings of Los Angeles and Salt Lake Railroad Company and That Atchison, Topeka & Santa Fe Railway Company on and along both banks of said Los Angeles River and said crossings between the line of Pacific Electric Railway Company and the lines of the other defendants herein, do constitute a grave and constantly increasing menace to the public safety and should be eliminated and abolished, but thus far said defendants have not eliminated or abolished said railroad grade crossings, or any thereof.

The population of the city of Los Angeles and the number of persons crossing said railroad grade crossings daily, both on and along said public streets, and as passengers and employees on said lines of the defendants herein, are increasing with great rapidity; the danger and menace of the railroad grade crossing situation hereinbefore set forth are rapidly becoming accentuated, and the necessity for relief by the elimination of said railroad grade crossings is urgent.

IV. The defendants each maintains a separate main passenger depot and passenger terminals, tracks and other facilities within the city of Los Angeles.

The passenger depot of the Los Angeles and Salt Lake Railroad Company is admittedly inadequate to serve the just and reasonable requirements of the traveling
39 Public. It was built in 1891, at an estimated cost of only $10,000.00, and is lacking in every particular necessary to satisfy the requirements of public convenience and necessity of a city of more than 750,000 population.

The passenger depot of The Atchison, Topeka & Santa Fe Railway Company was built in 1893 at an estimated cost

of $50,000.00. It now provides scant facilities for the use of passengers and does not serve the just and reasonable requirements of the traveling public.

The continued use of the passenger depot of the Southern Pacific Company does not conform to any satisfactory plan for the elimination of the dangerous railroad grade crossings on said Alameda street and elsewhere. Said depot does not conform in its location to the plan for the elimination of said dangerous railroad grade crossings required by public safety, convenience and necessity.

Each of said depots is used in both interstate and intrastate passenger traffic and each thereof is inconveniently located to meet the just and reasonable requirements of the traveling public.

V. In order to eliminate the dangerous railroad grade crossings hereinbefore referred to, to provide adequate and sufficient passenger station facilities for the Southern Pacific Railroad Company, the Southern Pacific Company, the Los Angeles and Salt Lake Railroad Company, the Union Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company in the city of Los Angeles, to promote the security, convenience and necessity of the passengers and employees of said defendants on said lines of railroad and of the public generally, and to secure adequate service and facilities for the performance by said defendants in this paragraph mentioned, and each of them, of their obligations as common carriers, it is necessary, and the public safety, convenience and necessity require, that a union passenger station and buildings incidental thereto be erected by said defendants in this paragraph specified, in the city of Los Angeles, and that in connection therewith said defendants make such improvements and changes in their existing facilities and arrange for such joint or other use of tracks or terminal facilities now constructed or to be constructed within the city of Los Angeles as may be reasonably necessary and incidental to the construction and use of said union passenger station and the elimination or abolition of such railroad grade crossings, and that the operation of said line of railroad of Southern Pacific Railroad Company on and along said Alameda street, between College street

and Fifteenth street, inclusive, in the city of Los Angeles, be thereafter abandoned, except for local freight switching.

In and by a proceedings known as Application No. 3346, heretofore filed by said defendants Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company with the Railroad Commission of California, to which application more particular reference will hereinafter be made, said defendants conceded and urged the desirability of the construction by them of a union passenger station and tracks and other facilities incidental to and in connection therewith in the city of Los Angeles, and offered to expend approximately $17,000,000.00 in such construction, but said application did not contemplate that The Atchison, Topeka & Santa Fe Railway Company should be admitted to the use of said union passenger station and facilities and the location of said proposed partial union passenger station was
41 not such as would best promote the public interest in the elimination of said dangerous railroad grade crossings in the city of Los Angeles or serve the comfort, convenience and safety of the traveling public.

VI. If no unified plan for the elimination of said dangerous railroad grade crossings and the establishment of satisfactory and appropriate passenger depot and other facilities in the city of Los Angeles should be made effective it would nevertheless be necessary for the defendants to expend individually for said purpose many millions of dollars in the immediate future.

It is greatly in the public interest and in the interest of the defendants themselves that these expenditures, instead of being made in a competitive and largely wasteful manner, each carrier seeking primarily to advance its own competitive interest or the interests of itself and its particular associates, were made in a unified manner in pursuance of a broad plan, the object of which would be to provide for the elimination and abolition of said dangerous railroad grade crossings and the establishment of adequate and satisfactory passenger terminal facilities in the city of Los Angeles in such a way as to avoid duplicate investments and operating expenses, prevent wasteful expenditures and serve the public interest.

VII. (*a*) During July, 1916, a number of civic organizations of the city of Los Angeles filed with the Railroad Commission of California formal complaints against Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and The Atchison, Topeka & Santa Fe Railway Company, asking that the Railroad Commission investigate the entire railroad situation in the city of Los
42 Angeles and then make its order for the elimination and abolition of the dangerous railroad grade crossings in the city of Los Angeles, and for other relief. The Municipal League of Los Angeles, the first of these complainants, alleged, in part, that in order to relieve the people of the city of Los Angeles from the danger, damage and inconvenience of the existing numerous railroad grade crossings and other conditions complained of, it will be necessary to concentrate the various tracks of the defendants in said proceedings and to provide for the use by them of a central or union passenger station. These complaints were followed by other formal complaints, including complaints by several municipalities in the eastern portion of Los Angeles county, who also made Pacific Electric Railway Company a party defendant. In August, 1916, the Railroad Commission consolidated all of said complaints for hearing and decision.

(*b*) The question of the Railroad Commission's jurisdiction having been formally raised, the Railroad Commission held a public hearing at which it heard argument on that question. Thereafter, on October 21, 1916, the Commission made and filed its Decision No. 3805, holding that it had jurisdiction, but dismissed the proceedings so that by appropriate proceedings before the Supreme Court of California, the Commission's jurisdiction might be passed upon authoritatively before a very considerable amount of time and labor and also thousands of dollars of both public and private funds should have been expended in studies and investigations. While the railroad companies filed formal pleadings challenging the Railroad Commission's jurisdiction, they advised the Railroad Commission in open hearing that they were doing so only to have the question of the Railroad Commission's jurisdiction authoritatively and promptly determined, and they stated that it was their

contention that the Railroad Commission had com-
43 plete jurisdiction, both as to the grade crossing elimination and the union passenger depot construction.

The entire matter was thereupon taken to the Supreme Court of California by two writs of mandamus. The Supreme Court thereafter, on June 11, 1917, made and filed its decision upholding the jurisdiction of the Railroad Commission and directing that a writ of mandate issue directing the Railroad Commission to consider and determine, upon the merits, the complaints hereinbefore referred to, (*Civic Center Association* v. *Railroad Commission,* 175 Cal. 441.)

(*c*) The Railroad Commission of California thereupon proceeded to hold hearings and take testimony in said proceedings, extending throughout the latter half of 1917, 1918, 1919, 1920 and the early portion of 1921. The Commission directed its own engineering department to make an independent investigation, the results of which are embraced in an exhaustive report which was later introduced in evidence and marked Railroad Commission's Exhibit No. 1. The city of Los Angeles contributed $20,000.00 of the public funds of the city toward the expenses of said investigation and report and the Railroad Commission contributed a much larger sum of the public funds of the state of California. Thereafter, on April 26, 1921, the Railroad Commission made its Decision No. 8901, reviewing exhaustively the entire matter, and ordering the defendants railroad companies to file plans for the elimination of specified dangerous railroad grade crossings along the Los Angeles River, to file plans for the erection of a union passenger station on a general location near the Plaza in Los Angeles, and on the completion thereof to remove all passenger traffic and all freight traffic except local freight switching from a desig-
nated portion of Alameda street in the city of Los
44 Angeles.

A copy of said Decision No. 8901 is hereto attached, marked Exhibit No. 2, and made a part hereof.

(*d*) Subsequent to said decision of the Supreme Court of California of June 11, 1917, and during the course of the hearings before the Railroad Commision on the merits, Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company

filed with the Railroad Commission of California their petition in Application No. 3346, invoking the jurisdiction of said Commission and asking its approval to the execution of a plan by which said railroads would convert the Arcade Depot of the Southern Pacific Railroad Company at Fifth and Central Streets in the city of Los Angeles into a union passenger terminal for themselves and the Pacific Electric Railway Company (but not for the Atchison, Topeka & Santa Fe Railway Company), in such a way as to accomplish two main purposes—first, to elimniate the Southern Pacific Company's passenger train operations and all of its freight train operations except local freight switching from Alameda street, thereby curing the dangerous railroad grade crossing, situations on that street; and second, to enable Los Angeles and Salt Lake Railroad Company to lease its admittedly unsatisfactory present passenger depot on the eastern bank of the Los Angeles River and utilize the more satisfactory Arcade side. Under this plan, the Southern Pacific Company's passenger and through freight trains would be operated, over the tracks of the Los Angeles and Salt Lake Railroad Company along the east bank of the Los Angeles River and the passenger trains of the Southern Pacific Company would be brought into the Arcade Depot by means of a long high trestle from the Los Angeles River to said Arcade Depot. Representatives of said carriers testified before the Railroad Commission that they stood ready to expend ap-
45 proximately $17,000,000.00 in the execution of said plan (which constituted only a partial and incomplete development), if permitted so to do by the Railroad Commission. Said application was by consent of all parties consolidated with the earlier proceedings for hearing and decision and was subsequently dismissed by the Railroad Commission. The reasons why said plan was not deemed to be in the public interest are set forth at length in said report of the Railroad Commission's Engineering Department, hereinbefore referred to, and in Decisions Nos. 8901 and 9838 of the Railroad Commission, herein referred to.

(*e*) Until said Decision No. 8901 was rendered by the Railroad Commission, the city of Los Angeles did not take any position on the disputed question as to the necessity for or the site of a union passenger depot. The city's

position was that this question should be decided by the Railroad Commission, a disinterested, expert tribunal, peculiarly well qualified and equipped to ascertain all the relevant facts and to pass a disinterested, competent judgment thereon. However, when the Railroad Commission made its said Decision No. 8901, the city of Los Angeles, by formal resolution of its city council, approved and endorsed said decision and accepted the same as determinative of the disputed issues of fact, and the city thereafter appeared before the Railroad Commission and before the Supreme Court of California in support of the Railroad Commission's findings and order. It is the city's position at this time, and an order is asked from this Commission accordingly, that an order be made by this Commission for the elimination of the railroad grade crossings herein referred to and the construction of a union passenger station in substantially the manner and by substantially the means specified by the Railroad Commission of California,
46 for the reason that the Railroad Commission's order, if carried into effect, will satisfy the city's complaint.

(*f*) The railroad companies, defendants in said proceedings, petitioned to the Rairoad Commission for a hearing from its said Decision No. 8901. Argument on said rehearing was thereafter held, and thereafter, on December 6, 1921, after a view of the premises, the Railroad Commission made its Decision No. 9838, modifying in certain respects its former decision, to meet objections of the railroads, but affirming the general conclusions set forth by it in said Decision No. 8901. A copy of said Decision No. 9838 is hereto attached, marked Exhibit No. 3, and made a part hereof.

The Railroad Commission's findings of fact in said Decision No. 9838 were as follows:

1. That the existing grade crossings of the Southern Pacific Company's tracks on Alameda street, at College street, North Main street, Macy street, Alice street, Commercial street, Jackson street, East First street, East Second street, East Third street, East Fourth street, East Sixth Street, Industrial street, East Seventh street, East Eighth street, East Ninth street, East Fourteenth street and East Fifteenth street, in the city of Los Angeles, and certain

existing grade crossings adjacent to the Los Angeles River in the city of Los Angeles, to-wit: the crossing of Macy street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, the crossing of Alice street and of the tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and
47 Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, and the crossing of Seventh street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company are unsafe, and the continued use thereof for the movement of trains by the said respective carriers using such crossings endangers the employees of said carriers and the public generally; and that public interest, safety, convenience and necessity require that all such dangerous conditions at said crossings be eliminated.

2. That the existing passenger stations of The Atchison, Topeka and Santa Fe Railway Company at East Second street and Santa Fe avenue in the city of Los Angeles, and of the Los Angeles and Salt Lake Railroad Company at East First street near the east bank of the Los Angeles River in the city of Los Angeles, are improper, inadequate and insufficient to promote the security, convenience and necessity of the public. That the existing depot of the Southern Pacific Company at Fifth and Alameda streets in the city of Los Angeles does not conform to the plan for the elimination of said dangerous railroad grade crossings in the city of Los Angeles herein found to be required by public safety, convenience and necessity.

3. That in order to eliminate the dangerous grade crossings hereinabove enumerated and to provide adequate and sufficient passenger stations for the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Com-
48 pany in the city of Los Angeles, for the promotion of the security, convenience and necessity of their employees and that of the public generally, and to secure adequate service and facilities for the performance by the said defendants, and each of them, of their public utility functions in the state of California, it is necessary, and

the public safety, convenience and necessity require that a new structure or structures, to-wit, a union passenger station and buildings incidental thereto, be erected by the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and in connection therewith such improvements and changes in existing facilities of said defendants be made by said defendants as may be reasonably necessary and incidental to the use of said union passenger station, and that all railroad traffic be eliminated from Alameda street, between College street and Fifteenth street, inclusive, in the city of Los Angeles, except local freight switching. That public safety, convenience and necessity require that a separation of grades be made by the defendants specified in the order herein at the said crossings adjacent to the Los Angeles River in the city of Los Angeles, to-wit, the crossing Aliso street and the tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, the crossing of Macy
49 street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, and the crossing of East Seventh street by the tracks of The Atchison, Topeka and Santa Fe Railway Compay and by the tracks of the Los Angeles and Salt Lake Railroad Company.

4. That public safety, convenience and necessity require that the location and the site of the union passenger station referred to in paragraph three of these findings be within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River.

The Railroad Commission's order in said Decision No. 9838 was as follows:

1. That the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to the procurement of sufficient grounds within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger sta-

tion thereon and buildings incidental thereto in the city of Los Angeles and to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said passenger depot.

50 2. That the site of the union passenger station referred to in paragraph one of this order shall be within that portion of the city of Los Angeles bounded by Commercial street, North Main Street, Redondo street, Alhambra avenue and the Los Angeles River.

3. That said Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, within six (6) months from the effective date hereof, file with this Commission, for its approval, a general plan or plans, with the necessary profile or profiles, and general and detailed drawings, of a union passenger station located on said site, together with all additions to, extensions of, improvements and changes in existing railroad facilities as are reasonably necessary and incidental to the use of said union passenger station; also estimates of cost of construction of said union passenger station, together with said necessary facilities and additions to, extensions of, improvements and changes in existing railroad facilities; also estimates of damages and of salvage; also description and plans of the necessary temporary operating arrangements during the period of the transition pending the completion of said new union passenger station.

4. That at the time of the filing of the plans referred to in paragraph three of this order, the said Southern

51 Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall file with this Commission a statement of the proportionate expense which each of said defendants is to bear for the procurement of said site and the construction of said union passenger station and said necessary facilities and changes, additions, extensions and improvements to existing facilities; and in the event said defendants shall fail to file said statement, showing the proportion of the expense which each of them, is to bear, as herein required, this Commission will proceed to fix and apportion said expense to each of said defendants,

5. That upon the filing of the plans referred to in paragraph three of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon the construction of said union passenger station shall commence within ninety (90) days after the approval by the Commission of said plans and shall be completed within three (3) years from that date, unless for good cause an extension of time is granted.

6. The defendants, Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall proceed to the construction of such viaducts, work and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public streets at Macy and East Seventh streets in the city of Los Angeles.

52 7. That said The Atchison, Topeka and Santa Fe Railroad Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans providing for grade separations at said Macy and Seventh streets; also profile or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of the cost of construction for each viaduct and for incidental expenditures and for damages.

8. That at the time of filing the plans referred to in paragraph seven of this order, the said The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, and the city of Los Angeles shall file with this Commission a statement showing the proportionate expense which each of said defendants and said city is to bear for the construction of said viaducts and other necessary works for the separation of grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of such structure and works shall be appointed to each of said defendants and said city by this Commission.

9. That upon the filing of the plans referred to in paragraph seven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said viaducts, structures and works for the separation of grades at said Macy street and Seventh street shall commence
53 within thirty (30) days after the approval by the Commission of said plans, and shall be completed within two (2) years from that date, unless for good cause an extension of time is granted.

10. That defendants, The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and all of them, shall proceed to the construction of such viaducts, works and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public streets at Aliso street, city of Los Angeles, and the tracks of the Pacific Electric Railway Company from the tracks of said other defendants.

11. That said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans, providing for said grade separations at Aliso street; also profile or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of cost of construction for each viaduct and for incidental expenditures and for damages.

12. That at the time of filing the plans referred to in paragraph eleven of this order, the said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, and the city of Los Angeles, shall file with this Commission a statement
54 showing the proportionate expense which each of said viaducts and other necessary works for the separation of said grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of

such structures and work shall be apportioned to each of said defendants and said city by this Commission.

13. That upon the filing of the plans referred to in paragraph eleven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said necessary viaducts, structures and works for the separation of grades at said Aliso street shall commence within thirty (30) days after the approval by the Commission of said plans and shall be completed within two (2) years from said date, unless for good cause an extension of time is granted.

14. That upon the completion of the union passenger terminal, as required by this order, the defendant, Southern Pacific Company, shall discontinue the operation of trains on Alameda street, between College street and Fifteenth street, inclusive, in the city of Los Angeles, except for the purpose of local freight switching, which may be carried on during limited hours to be hereafter fixed by supplemental order."

Southern Pacific Railroad Company, Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway
55 Company thereafter took the Railroad Commission's said order to the Supreme Court of California by writ of *certiorari*, which court, on December 19, 1922, made its order annulling the Railroad Commission's order. A copy of the decision of the Supreme Court is hereto attached, marked Exhibit No. 4, and made a part hereof.

The last paragraph of said decision reads as follows:

"From the foregoing excerpts from the act of Congress of 1920, amendatory of the Interstate Commerce Law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceed-

ings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein."

VIII. The injury and menace to the life and property and the discomfort, inconvenience and delays caused by the conditions hereinbefore set forth are constantly increasing with the growth of the city of Los Angeles and the business of the defendants, and the barrier between the business center of the defendants, and the barrier between the business center of the city and the districts to the east thereof is constantly becoming more intolerable.

The safety, necessity, comfort and convenience of the public who travel on and along the public streets of the city of Los Angeles across said dangerous railroad grade crossings, of the public who as passengers and employees
56 of the defendants travel on their lines of railroad in intrastate and in interstate commerce over said dangerous railroad grade crossings and of the public who utilize the passenger station facilities of the defendants in the city of Los Angeles urgently require that this Commission grant the relief herein prayed for.

The city of Los Angeles stands ready to grant such franchises or permits and to enact ordinances for the opening or closing of such public streets, if any, as may be necessary to make effective the order prayed for in this proceeding.

Wherefore, complainant, the city of Los Angeles, prays:

(1) That the defendants may be severally required to answer the charges herein.

(2) That after due hearing and investigation an order or orders be made commending said defendants, as their interests may respectively appear;

(*a*) To eliminate and abandon said dangerous railroad grade crossings of Southern Pacific Railroad Company on Alameda street in said city from College street to East Fifteenth street, inclusive;

(*b*) To eliminate and abandon the following three dangerous railroad grade crossings adjacent to the Los Angeles River in said city, viz:

(1) The crossing of Macy street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and the tracks of Los Angeles and Salt Lake Railroad Company; (2) the crossing of Aliso street and the tracks of Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and the tracks of Los Angeles and Salt Lake Railroad Company, and (3) the crossing of Seventh street by the tracks of
The Atchison, Topeka and Santa Fe Railway Com-
57 pany and tracks of Los Angeles and Salt Lake Railroad Company;

(*c*) To eliminate and abandon such other dangerous railroad grade crossing of the defendants or any thereof, hereinbefore referred to in said city, as may be eliminated in conjunction with and as a part of the plan outlined in said decision No. 9838 of the Railroad Commission of California;

(*d*) To construct and thereafter operate and use a union passenger depot and appurtenance on a site located within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, and to acquire such land, if any, as may be necessary for said purpose;

(*e*) To abandon the operation of said main line tracks of Southern Pacific Railroad Company on said Alameda street from College street to East Fifteenth street, inclusive, for the operation of passenger trains and also freight trains except local freight switching; and

(*f*) To construct or acquire such structures, facilities, tracks and other property, to make such extensions or abandonments of railroad lines or other facilities or of the operation thereof, and to arrange for such joint or other use of tracks or terminal facilities now constructed or to be constructed, within the city of Los Angeles ,as may be reasonably necessary and incidental as a part of and in furtherance of the matters hereinbefore in this prayer specified, or any thereof; and

(3) That this Commission make such other or further order or orders in furtherance of the relief herein asked

for as it may find to be just and equitable and in the public interest.

58 Dated at Los Angeles, California, this — day of March, 1923.

CITY OF LOS ANGELES,
By JESS E. STEPHENS,
*City Attorney,*
*City Hall, Los Angeles, Cal.,*
By MILTON BRYON,
*Deputy City Attorney,*
*City Hall, Los Angeles, Cal.*

MAX THELEN,
*Of Counsel,*
*Balfour Bldg., San Francisco, Cal.*

# INTERSTATE COMMERCE COMMISSION

## LOS ANGELES PASSENGER TERMINAL CASES

### No. 14778[1]

### CITY OF LOS ANGELES *v.* LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.

*Submitted February 27, 1925. Decided July 6, 1925*

1. Public convenience and necessity found to permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.
2. Public convenience and necessity found not to require the construction of new or extension of existing lines of railroad in the city of Los Angeles, Calif., by the Southern Pacific and the Los Angeles & Salt Lake, as described in the application in Finance Docket No. 3569. Application denied.
3. The extension by defendants of their respective main lines of steam railroad so as to reach and serve such union passenger station and terminal as they may construct and establish in a described portion of the city of Los Angeles, Calif., in accordance with a lawful order of the Railroad Commission of California, and the extension of such main lines to provide for rearrangement of their respective passenger and freight routes incidental to the convenient and proper operation of such union station and terminal, found reasonably required in the interest of public convenience and necessity, and the expense involved therein found not to impair the ability of said defendants to perform their respective duties to the public.
4. In addition to the abandonment of train service on Alameda Street as above authorized, public convenience and necessity found to permit the abandonment by defendants of such portions of their lines of steam railroad, or of all or any portion of the interstate service thereon, as may be incidental to the rearrangement of routes, tracks, and terminal facilities necessitated by the establishment of a union passenger station and terminal as indicated.
5. Joint use by defendant steam railroads of such main-line tracks of each other as may be incidental, and necessary or convenient, to the proper operation of a union passenger depot and terminal established as above indicated found to be in the public interest and to be practicable, without substantially impairing the ability of the carrier or carriers owning

[1] This report also embraces Finance Docket No. 3564, In the Matter of the Application of Southern Pacific Company and Southern Pacific Railroad Company for Certificate of Public Convenience and Necessity, and Finance Docket No. 3569, In the Matter of the Application of Southern Pacific Company, Southern Pacific Railroad Company, and the Los Angeles & Salt Lake Railroad Company for Certificate of Public Convenience and Necessity.



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or entitled to the enjoyment of such track or tracks to handle its or their own business.

6. Jurisdiction of No. 14778 and Finance Docket No. 3556 retained for the purpose of making such further findings and orders and issuing such certificates as the record warrants.

*Jess E. Stephens*, *Max Thelen*, and *Milton Bryan* for city of Los Angeles; and *Hugh Gordon*, *Carl I. Wheat*, and *Woodward M. Taylor* for Railroad Commission of the State of California.

*William W. Clary* for Central Development Association; *Gurney E. Newlin* for Central Development Association, Business Men's Cooperative Association, Lincoln Heights Board of Trade, Broadway Improvement Association, North Main Street Improvement Association, and Greater Los Angeles Improvement Council, interveners.

*C. W. Durbrow* for Southern Pacific Company and Southern Pacific Railroad Company; *A. S. Halsted*, *Fred E. Pettit, jr.*, *H. A. Scandrett*, and *J. M. Souby* for Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company; *E. W. Camp*, *T. J. Norton*, *F. E. Andrews*, and *M. W. Reed* for Atchison, Topeka & Santa Fe Railway Company; and *Frank Karr* for Pacific Electric Railway Company.

*Spencer Thorpe* for W. H. Daum and *George H. Dunlop* for Municipal League of Los Angeles, interveners.

## Report of the Commission

Aitchison, *Chairman:*

The city of Los Angeles is a municipal corporation of the State of California and complainant in No. 14778. Defendants are railroads engaged in interstate transportation of passengers and freight, and enter Los Angeles. The city asks that the commission direct defendants (1) to construct, operate, and use a union passenger depot within a defined area in that city, and to acquire land necessary therefor; (2) to abandon main-line passenger and freight service, except local freight switching, on and along a portion of Alameda Street in Los Angeles; (3) to eliminate and abandon certain railroad grade crossings in the city; and (4) to construct or acquire such structures, tracks, and facilities, to construct or abandon such lines or facilities of operation, and to arrange for such joint or other use of existing tracks, or tracks to be constructed within the city of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the foregoing. The only relief sought against defendant Pacific Electric Railway is the participation by it in the expense of constructing a viaduct at Aliso Street in Los Angeles to eliminate grade crossings on both banks of the Los Angeles River.

In Finance Docket No. 3556 the Southern Pacific Company and its lessor, Southern Pacific Railroad Company, ask for a certificate of public convenience and necessity authorizing the abandonment of 0.15 mile of main-line track, and the abandonment of operation of passenger and freight train service (except freight switching service) on 6.6 miles of main-line track on Alameda Street. In Finance Docket No. 3569 the Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company ask for a certificate of public convenience and necessity authorizing applicants to construct certain new main lines and to extend their existing main lines of railroad in Los Angeles so as to permit the joint use and operation by these applicants of the existing passenger station of the Southern Pacific at Fifth Street and Central Avenue, and so as to permit the removal of Southern Pacific passenger and freight trains, except industrial switching, from Alameda Street. The Railroad Commission of the State of California appeared in support of the complaint, and with the city intervened in opposition to the relief sought by applicants. There were other interventions for or against the complaint.

HISTORY OF PROCEEDINGS

The matters involved originated in complaints filed with the Railroad Commission of California in 1916, which asked that body to order the elimination of certain grade crossings in Los Angeles. At least one complaint sought to require the three steam lines to provide and use a union passenger station. On June 11, 1917, the Supreme Court of California upheld the jurisdiction of the railroad commission to order the separation of grades, which had been questioned, and directed it to consider and determine the complaints upon the merits. *Civil Center Association* v. *Railroad Commission*, 175 Cal. 441.

The jurisdiction of the railroad commission to enter an order for a union station was not then questioned. Following exhaustive investigation by its engineers, and after numerous hearings, the railroad commission on April 26, 1921, made its decision, known as No. 8901. 19 Cal. R. R. Com. 740. The railroad commission ordered the defendant railroad companies to file plans for the elimination of specified railroad grade crossings along the Los Angeles River, and for the erection of a union passenger station at some site within a defined area in the vicinity of the Plaza in Los Angeles; and upon the completion thereof to remove all passenger traffic and all freight traffic except local-freight switching from a designated portion of Alameda Street. The Plaza is a small circular park, which marks

the center of the original pueblo of Los Angeles. During the hearings which culminated in the order just described, applicants sought the railroad commission's approval of the execution of a plan generally similar to that now proposed in our Finance Dockets No. 3556 and No. 3569. This application was consolidated with the earlier proceedings mentioned for hearing and decision, and was subsequently dismissed by the railroad commission.

Subsequent to the issuance of Decision No. 8901, the city council of the city of Los Angeles, which had taken no position as to the necessity of a union station, formally approved, endorsed, and accepted the decision as determinative, and in the proceedings which followed appeared in support of the railroad commission's findings and order.

Following a rehearing of Decision No. 8901, had on petition of the railroad companies, the railroad commission on December 6, 1921, issued its Decision No. 9838 modifying the previous conclusions. 20 Cal. R. R. Com. 937. Briefly, the later decision ordered the carrier to proceed to procure sufficient grounds for a union passenger station within a defined area, to prepare and submit plans for such union station, passenger terminal, and necessary facilities, and upon approval of the plans by the commission, to proceed with the construction of such station and terminal. Similar orders were included for the elimination of specified grade crossings.

Each of the three steam lines thereupon took the railroad commission's decision and order to the Supreme Court of California. On December 19, 1922, that court in *Atchison, T. & S. F. Ry. Co.* v. *Railroad Commission*, 190 Cal. 214, held that the transportation act, 1920, vested full power and authority over the matter of union terminal depot facilities of interstate carriers by railroad in the Interstate Commerce Commission, and divested the Railroad Commission of California of the jurisdiction sought by it to be exercised in the proceedings and order presented for review. Upon petition of the railroad commission, the Supreme Court of the United States granted writs of certiorari in these matters.

The City of Los Angeles thereupon filed with this commission the complaint in No. 14778. Hearing thereon was had in July, 1923, and a complete transcript of the testimony before the state commission received as a part of the evidence. Argument and submission was deferred until the decision of the Supreme Court of the United States. That body on April 7, 1924, affirmed the judgment of the Supreme Court of California, and held that a certificate of public

convenience and necessity from this commission was necessary in the construction of a new interstate union station, involving a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals, such as the state commission proposed to require. *R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331. In concluding, the Supreme Court used the following language:

> We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.
>
> For the reasons given we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act,[1] the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

Subsequent to the issuance of this decision the Southern Pacific and the Salt Lake filed the above-mentioned applications in Finance Dockets No. 3556 and 3569. These applications were consolidated with No. 14778, and the evidence previously received in the latter case made available in the finance proceedings also. Hearing of the consolidated cases was had in June, 1924.

## JURISDICTION

Jurisdictional questions arise at the outset. Defendants deny our authority to require the construction of a union station as sought by the complaint in No. 14778. Complainant contends that Congress has reposed that authority with us. All parties concede that if we have the power to require the construction of a union station, it has come in the transportation act, 1920. Prior to that enactment such power was clearly in the States. In numerous instances States had by constitution or statute delegated power to their railroad commissions to require the construction and operation of union stations. In such cases, where the facts reasonably come within the legislative enabling act, the State courts have upheld orders of the State commissions. The State courts have held the order could not be defeated (1) by showing that compliance would require a railroad to acquire additional property by the exercise of the power of eminent domain, (2) or because it contemplated the abandonment by some railroads of their existing passenger stations and other pas-

[1] These are paragraphs similarly numbered, now a part of section 1 of the interstate commerce act.

senger facilities, (3) or because compliance would require a railroad to acquire the right to use the property of a rival railroad.[3]

Careful study of the interstate commerce act convinces us that Congress has not conferred upon us authority to require carriers to construct union passenger stations under conditions such as are here present. We are not considering a case where prejudice or discrimination is involved. There is no language in the act apt for the purpose. The provision in section 3, paragraph (4) for joint use of terminal facilities expressly covers only facilities existing when the requirement is made. The Supreme Court concedes this in *R. R. Comm.* v. *Southern Pacific Co.*, *supra*, and as warrant for the control which it states we have over the larger and more important new terminal projects refers directly (page 344) to paragraphs (18) to (21) of section 1. Paragraph (18) forbids the extension, construction, acquisition, operation, or abandonment of any line of railroad by any carrier subject to the act without first securing from us an appropriate certificate of convenience and necessity. Paragraph (19) provides for the procedure upon application for certificate, and paragraph (20) for the issuance of certificates and the enforcement of paragraphs (18) and (19). Paragraph (21) empowers us to authorize or require a carrier by railroad subject to the act to provide itself with safe and adequate facilities for performing as a common carrier its car service, and to extend its line or lines. The same paragraph also provides a penalty for noncompliance with orders made by us in pursuance thereof.

The term "car service" as used in the act relates to *vehicles* used in the transportation of *property*. The authority to require a carrier to extend its line may include authority to require it to construct stations necessary and incidental thereto. That question is not now before us. But assuming such authority, we conclude that paragraph (21) does not empower us to order the construction of a union passenger station where, as here, the station would be the principal thing and the extension of lines the incident.

Complainant argues that we have power to make the order prayed for under paragraph (3) of section 3, which provides, in part, that

[3] Cases in point are *State ex rel. Railroad Commissioners* v. *Atlantic Coast Line R. Co.*, 67 Fla. 441; *Griffin* v. *Southern Ry. Co.*, 150 N. C. 312; *Corporation Commission* v. *Seaboard Air Line Ry. Co.*, 161 N. C. 270; *North Carolina Corporation Com'n.* v. *Southern Ry. Co.*, 165 N. C. 435; *Missouri, K. & T. Ry. Co.* v. *State*, 38 Okl. 401; *Gulf, Colorado & S. F. Ry. Co.* v. *State* (Tex. Civ. App.), 167 S. W. 192; *State* v. *St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 199 S. W. 529; *Railroad Commission of Alabama* v. *Northern Alabama Ry. Co.*, 182 Ala. 557; *Railroad Commission of Alabama* v. *Alabama Great Southern Ry. Co.*, 185 Ala. 354; *Mayor and Aldermen of Worcester* v. *Norwich & Worcester Railroad Co.*, 109 Mass. 103; *State* v. *St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491; *Wisconsin, Minnesota & Pacific Co.* v. *Jacobson*, 179 U. S. 287, 302 (switch connection); *Missouri, O. & G. Ry. Co.* v. *State*, 29 Okl. 640; *Chicago, R. I. & Pac. Ry. Co.* v. *State*, 90 Okl. 173.

carriers "shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, * * *." Assuming that this provision makes it the duty of carriers to maintain union-station facilities in a case where separate facilities would not be reasonable and proper, we must still look elsewhere for authority to require them to provide such facilities. Such authority is necessarily different from the right to award damages for violation of provisions of the act.

If recourse be had to our duty under section 12 to enforce the provisions of the act, or to our power under section 15 to determine and prescribe what "practice" in lieu of that found in violation of the act will thereafter be just, fair, and reasonable, we are met by the decision of the Supreme Court in *United States* v. *Pennsylvania R. R. Co.*, 242 U. S. 208. The case arose before the transportation act, 1920, and does not involve any additions or changes in our jurisdiction made by that act. In the case under review our order required defendant to provide and furnish tank cars for the interstate shipment of oil from certain refineries. In affirming the judgment of the lower court enjoining our order the Supreme Court particularly referred to section 12 and stated that it was the duty of carriers both under the original act to regulate commerce of 1887 and the amendment of 1906 to furnish the instrumentalities of transportation, but indicated that jurisdiction to enforce the duty was in the courts and not in us (p. 227).

The court especially referred to the word "practices" as used in section 15 of the act, and to the contention that the neglect to provide or the refusal to furnish tank cars was an unlawful "practice," the discontinuance of which we could require. The court concluded that the collocation of the term with "classifications" and "regulations" was intended to confine it to acts or conduct having the same purpose as its associates, and that it was not to be understood in the broad sense contended. The court noted that a contrary conclusion would apparently give us power to order enlargement of terminal facilities, increase in the number of locomotives, and extension of tracks or branches. After stating that if Congress had intended such consequence "it would not have left its intention to be evolved from obscure language but would have put it in explicit declaration and with notice and time for accommodation to it," the court said:

> It is difficult to particularize all that the ruling of the Commission implies of power. What of omission or commission in the carrier's relation to the

public may not be said to be a practice or practices in the broad sense attempted to be given to those words? A railroad's powers are its duties, bearing, of course, obligations; and all of them by the asserted construction are swept under the jurisdiction of the Commission—so swept by a single word, not of itself apposite, and determined besides, by its association, against the contention. This was apparent to the dissenting commissioners and repelled their concurrence. Well might they have recoiled from going to such extreme upon doubtful implication and have been impelled to declare as they did declare that if such power was given it logically and necessarily extended to every facility of transportation.

In the *Selma Station Case, North Carolina Corporation Com'n* v. *Southern Ry. Co., supra*, the Supreme Court of North Carolina considered the effect of the passage of the transportation act upon an order theretofore entered by the corporation commission requiring two railroad companies to erect a joint station at a junction of their roads. In deciding in favor of the validity of the State commission's order the court, at page 459, said in part:[4]

We have examined the act of 1920 carefully, and we do not find any provision therein which grants to the Interstate Commerce Commission, either expressly or by clear implication, the power, or which makes it its duty, to require the erection of passenger stations. It is not claimed in this case that such an order has been made by the Interstate Commerce Commission. The

[4] Further in considering the intent of Congress as expressed in the statute, the opinion proceeds:

"While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record November 15, 1919, p. 9067):

"'Provided further, that the Commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission.'

"The purpose of this amendment, as explained by Congressman McClintic (pages 9067, 9068) was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the government during the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

"'Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matters of depots and joint use of depots is practically in the jurisdiction of the state commissions, and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals.'

"Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected, Congressional Record, November 15, 1919, p. 9071. This would seem to indicate that the Congress saw fit to leave the federal commission without jurisdiction, understanding that the matter of union stations would continue within the jurisdiction of the state commissions."

right of the state, then, to act in this particular is expressly preserved to it by Transportation Act of 1920, page 402, subsec. 17 (41 Stat. at Large, p. 477) as follows: "*Provided, however*, That nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just, and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

These conclusions are strengthened by scrutiny of the opinion of the Supreme Court in *R. R. Comm.* v. *Southern Pac. Co. supra*, and which seems to determine the extent to which action by us under the provisions of the transportation act is necessary in such instances as that now presented.

In referring to the construction of new union passenger terminals which require the expropriation by carriers of property of third persons, the expression of the Supreme Court (italics ours) is that "*means of control* over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of section 402." After stating the substance of those paragraphs, the court continues: "such a certificate is, we think, necessary in the construction of a new interstate union station *which involves a substantial and expensive extension of the main tracks or lines* of interstate carriers who theretofore have maintained separate terminals." The court then makes clear that the paragraphs mentioned include the extension of new main track for the purpose of rearranging terminals, and continues:

> One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso of paragraph 17, section 402 of the Transportation Act shows:
>
> "That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."
>
> But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

The court then notes the findings prerequisite to the issuance by us of a certificate for the extension of lines. It comments on the important changes and the considerable expense involved in providing a union station in Los Angeles, and adds:

> We think it clear that in such an extension of main lines with their terminals the Interstate Commerce Commission is required by the act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public.

We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14778. To make the record clear, we repeat that no question of discrimination or preference is presented here; and that under the issue framed in the complaint in No. 14778 we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants. With respect to the remaining issues before us, we are authorized to find (1) whether the present or future public convenience and necessity permit of the proposed abandonments of line, (2) whether the proposed extensions of line are reasonably required in the interest of public convenience and necessity, and whether the expense involved therein will impair the ability of defendants to perform their duties to the public, and (3) whether such joint use of existing terminal facilities by other than the owning carrier, as would be necessary if a new union passenger terminal were established in the Plaza area, is in the public interest and practicable, without substantially impairing the ability of the owning carrier to handle its own business. With these issues in mind we will examine the evidence.

## PHYSICAL SITUATION

A somewhat detailed description of the physical and topographic situation is necessary, and will be set out as Appendix 1 to this report. The places specified in this report are within California, except as otherwise stated; and the streets and highways referred to are within Los Angeles except as may be distinctly stated otherwise.

### GRADE CROSSINGS

Alameda Street is the principal north and south street through the industrial section of Los Angeles. The presence on that street for practically its whole length of the Southern Pacific double-track main line at grade results in a grade-crossing situation which all parties agree is a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west urban traffic.

The plans here presented for our approval by both complainants and the carriers provide for the removal of all train service from Alameda Street except local freight switching for industries along or reached by that street, which constitutes about 3 per cent of the present freight traffic. In accomplishing this object, complainant's plan would provide for the abandonment of the present Arcade station of the Southern Pacific and for the erection of a new union passenger station at another location. Under the plan of the Salt Lake and Southern Pacific the Arcade station would be converted into a joint station with the Salt Lake, to be reached from the east bank of the river over a viaduct extending west across the river and industrial section to the Sixth Street end of the station.

In addition to the crossings of Macy and Aliso Streets at grade by the Santa Fe detailed in the appendix, that carrier similarly crosses at grade North Main, Seventh, and Ninth Streets on the west bank of the river. Seventh Street is a particularly important east and west thoroughfare. On the east bank of the river the Salt Lake crosses at grade all five of the streets named. At present there are viaducts across the river and river-bank tracks at North Broadway, North Spring, First, and Fourth Streets, but the North Spring Street and First Street viaducts are not adequately constructed and will soon require replacement or removal.

The report of the railroad commission's engineers recommended the elimination of all important grade crossings on both banks of the river by depression of the tracks and by improvement of existing viaducts or construction of new viaducts across the river and the adjacent tracks. They recommended that all the streets named be so treated except North Spring Street, and the latter crossing was to be entirely eliminated.

While all parties agree that the grade crossings along Alameda Street and along the river should be eliminated, complainant seeks to have the union station question determined before undertaking the extensive construction of viaducts. It contends that the design of the viaducts and the extent of track depression will vary dependent upon whether the carriers' plans for a joint station or its own plans for a union station are approved. Should a union station be erected on some one of the sites suggested to the California commission or to us, the design of certain viaducts would be changed in degrees varying from a small to a substantial extent. This would not be true as to all crossings. The California commission on April 21, 1924, ordered the separation of grades at the Ninth Street river crossing, on the theory that the proposed structure would not interfere with any comprehensive plan for dealing with the grade crossing and traffic problems theretofore or at present

proposed in proceedings before that body or before us. Plans for a viaduct at Macy Street were to be submitted to that commission by July 15, 1924.

NEED FOR NEW OR ADDITIONAL STATION FACILITIES

The present Southern Pacific Arcade station was built to replace an earlier structure, and was completed in 1915 at a cost of $646,428, including appurtenances except coach yard structures. The station grounds include most of the land bounded by Alameda Street on the east, Central Avenue on the west, and Fourth and Sixth Streets on the north and south, respectively. The station building itself fronts on Central Avenue and faces down Fifth Street. The main concourse is of fireproof construction, but the wings on both sides are of frame construction with brick walls. It is well designed, and is adequate and suitable for present purposes. As above indicated, the removal of passenger trains from Alameda Street will require either its abandonment or some other means of approach such as applicants here propose.

As a result of protests against the construction of the present Arcade station, because it was feared that elimination of grade crossings on Alameda Street might thereby be delayed or prevented, the order of the railroad commission authorizing demolition of the old Arcade station and the erection of the present one provided "that the tearing down and abandonment of said old depot, and the taking up, relocating, and placing of new trackage in connection with said new depot, or the approval of this commission therefor, shall never be used as a defense against the separation of grade crossings in the state of California."

The Salt Lake admits that its passenger station at First Street on the east bank of the river is inadequate and inconvenient. The structure is a two-story frame building, erected in 1891, which cost about $10,000. It is largely given over to division offices and furnishes very poor facilities to passengers. The delay in determining the passenger terminal problem in Los Angeles is undoubtedly the only excuse for its continued existence.

The Santa Fe depot on the opposite bank of the river fronts west on Santa Fe Avenue at Second Street. It is a relatively small brick building erected in 1893, but subsequently enlarged at various times. Its value, including furniture, parking, paving, etc., is estimated at $50,000. Though much better than the Salt Lake Station it can not be considered an adequate station. It would have been replaced several years ago by a modern structure but for the uncertain outcome of the proceedings mentioned.

Complainant claims that the present time is particularly opportune for the building of a union passenger terminal. As to the necessity for such a terminal, it contends that the carriers must shortly expend moneys for needed improvements which will purchase more conveniences for the public and result in more carrier economies if spent on a union terminal instead of on separate facilities, and that Los Angeles desires a union station located with best reference to transit lines and important thoroughfares and in harmony with its civic plans. Defendants contend that as Los Angeles is to a large extent a terminal city, the number of persons transferring from one station to another without stop-over is smaller than in many cities of comparable size. Applicants state that their plan for a joint station did not originate in any need of the public for joint or union service, but only from the needs of the Southern Pacific for trackage rights along the Los Angeles River and of the Salt Lake for a new depot.

PROPOSED FACILITIES

Three principal plans for passenger terminal facilities in Los Angeles are before us. The first of these, which complainant referred to at the first hearing in No. 14778 as illustrative, is substantially the plan for a union station at the Plaza included in the recommendations to the California commission by its engineers following the investigation mentioned. It is sometimes termed the Sachse plan, and we will so designate it. The second, which may be termed the Plaza plan, was presented by the California commission at the hearing of the consolidated cases, and contemplates the erection of a union station at a specific site in the Plaza area. The city and the California commission, together termed complainants, ask that the carriers be required to provide themselves with an adequate union passenger terminal at some site in the Plaza district, and not that they build according to any particular plan. The presentation of the Plaza plan was mainly to demonstrate that an adequate union station conforming to the terms of the State commission's order could be provided at a cost reasonably comparable with that necessary to provide a joint station for the Southern Pacific and Salt Lake and separate facilities for the Santa Fe. The third plan is that of applicants for a joint station at the Arcade site, which will not be used by the Santa Fe.

The Sachse plan for a union station at the Plaza is part of a plan of larger scope suggested by the California commission engineers as a solution of transportation, terminal, and grade-crossing problems in and near Los Angeles. This larger plan, sometimes also referred to as the Sachse plan, contemplated union passenger and less-than-carload freight terminals, provided for bringing main

lines of the Pacific Electric Railway into the station, and included an extensive program of grade separation besides many other related improvements. The order of the California commission above referred to did not require the carrying out of the larger plan referred to, or the construction of the Sachse plan station. Because of its relation to the more comprehensive plan, the Sachse station plan more than either the Plaza or the Arcade plans takes into consideration the desires of the city of Los Angeles to establish a civic center in the vicinity of the Plaza. In Appendix 2 to this report we outline the three plans presented.

The Southern Pacific and the Salt Lake present an agreement for the establishment of the facilities described in the appendix as the Arcade plan, for their joint use. Provision is also made for a right of way along the east bank of the river for the Pacific Electric, an extensive interurban system radiating out of Los Angeles and a subsidiary of the Southern Pacific.[5]

In the agreement between applicants no provision is made under the Arcade plan for bringing into the station interurban trains of the Pacific Electric, the main line of which would be distant about 1,000 feet from the station on a viaduct 37 feet above grade. It would be feasible to extend a spur from the Pacific Electric viaduct into the Arcade station grounds so that cars from Pasadena, Long Beach, and other points scheduled to meet steam trains could be operated into the station.

The contract between the applicants for the joint use of facilities does not provide for the admission of the Santa Fe to the Arcade station at any future time. The Santa Fe does not wish to use the Arcade station or to join in building a union station at the Plaza, although it would least dislike the latter plan. Its preference is for a separate station of its own on the present site.

### COMPARISON OF ARCADE AND PLAZA PLANS

1. *Basis of comparison.*—The proponents of plans for a union station in the Plaza district and the applicants who favor a joint station for the Southern Pacific and the Salt Lake at the Arcade site with a separate station for the Santa Fe, each seek a finding from us that public convenience and necessity require the carrying out of the plan which they respectively favor. We therefore compare the plans presented to determine which would best serve the

[5] This right of way would be reached from the Pacific Electric station at Sixth and Main Streets by continuing the present viaduct, which extends to San Pedro Street, westerly parallel to Sixth Street over the curved approach tracks described at Sixth and Alameda streets, parallel with and immediately north of the steam-line structure, reaching grade on the east bank near Fourth Street. Near Aliso Street the Pacific Electric would cross the steam-line tracks, probably overhead, and connect with its private right of way to the northeast. From a point near Alameda Street another viaduct would branch to the south and connect with the Pacific Electric right of way near Fourteenth Street.

public convenience and meet the public necessity. Except as otherwise indicated, the Arcade plan will be compared only with the specific Plaza plan presented at the last hearing. Among the points on which the parties make comparison are the adequacy of the site and the facilities which are to be provided thereon; the accessibility of the station from all portions of the city and suburbs by vehicles, street-car lines, and interurban lines; the convenience of the station to passengers and for handling of baggage, express, and mail; the segregation of passenger and freight traffic; the effect of the station site as a barrier between parts of the city; the consonance of the plans with the civic plans of the city; the new money cost of and total investment under the different projects; the relative expense of operation and the length of time necessary to carry them out. In addition, though not involved before us in the sense that our approval is sought in connection therewith, is the relative possibility under the two plans of eliminating grade crossings of the Pacific Electric in Los Angeles, which here is an element only as it may affect the question of the public interest. Furthermore, the Arcade plan makes no provision for the Santa Fe, but leaves that road to provide adequate facilities for itself.

2. *Adequacy.*—On the subject of adequacy of facilities most of the evidence related to the adequacy of the Arcade plan as to site and facilities. Except for a track across Fourth Street connecting with Alameda Street near Third Street, the station would be a stub-end station. The Plaza station also would be of the stub-end type. Stub terminals require more station tracks than do through terminals. One through track is estimated as equivalent to at least two tracks in a stub-end station. At present the Arcade station has 8 station tracks and has 2 approach tracks at each end leading to Alameda Street. As indicated, under the proposed arrangement there would be 12 station tracks and 2 approach tracks.

As to the adequacy of the Arcade site for a union station, the engineers of the California commission in their report stated:

> The site is not large enough for an adequate and permanent union station such as, in our opinion, is appropriate for the city of Los Angeles. Not only does it appear that the site may be too narrow for the required number of station tracks but there seems to be insufficient room for proper mail and express facilities and also for baggage.

In the opinion of the California commission's engineers an adequate site for a stub terminal for Los Angeles should permit the construction of 18 station tracks. They criticised the mail, express, and baggage facilities because of the seemingly impossibility of locating them so that they could be handled economically at grade. Expansion of the site would be expensive and inconvenient. Relocation of Alameda Street, the closing of or separation of grades on

Fourth Street, or the elevation of the station tracks are among the most probable means of expansion, and any of these would be attended by necessary destruction of permanent buildings.

The record contains comparisons of the proposed Arcade joint station with 18 stations in 10 important cities with respect to seating capacity and space provided for concourse, lounge and smoking rooms, and for baggage.* Stations doing a large interchange business require more seating capacity than a terminal station, and those handling much suburban travel require more concourse space than those mainly handling through passengers. Considering these facts, the seating capacity of the Arcade station compares favorably with the others, and its concourse space, while less than in all except four of the stations, is probably ample, particularly if the number of daily trains be taken as an indication of the relative number of persons using the several stations. Of the stations with which comparison is made, only the Kansas City station has more space devoted to lounge and smoking rooms than the Arcade, and only four have substantially more baggage space.

With respect to the adequacy of the Arcade station buildings for union terminal use, the report of the engineers of the California commission states:

> The present station building is large enough for some time to come. The baggage room is also sufficient. The express building will do for a "delivery" building, but a new "forwarding" building should be built with 10,000 square feet of floor area, south of the present auto park.

In May, 1923, the last period for which definite figures were given, 62 regularly scheduled through and local trains a day arrived at or departed from the Southern Pacific and Salt Lake stations, besides extra trains. All three carriers serving Los Angeles handle a total of about 84 regularly scheduled trains, about 21 of which are local trains with runs not over 100 miles in length. Based on past experience, applicants estimate that the total number of regularly scheduled trains of all three lines will amount only to about 81 trains in 1943. In 1910 the three steam lines serving Los Angeles handled in their city stations approximately 132 trains daily. At that time the population of Los Angeles was 325,000; now it is more than threefold that figure. The decrease in the number of trains during the intervening period was due to the taking off of certain of the local trains, which in 1910 numbered 78 per day. The restriction of local steam-train service apparently resulted from the development of the extensive interurban business of the Pacific

* These cities are Boston, Mass.; Buffalo, N. Y.; Chicago, Ill.; Denver, Colo.; Detroit, Mich.; Kansas City, Mo.; Minneapolis, Minn.; Omaha, Nebr.; St. Louis, Mo.; and Washington, D. C.

Electric, the establishment of auto stage lines, and the increase in the number of private automobiles. Since 1910 the number of through trains on all lines has increased from 50 per day to 63 at the present time. Applicants' estimate of a total of 81 regular trains in 1943 in part assumes that no local service will be maintained after 1928. The report of the engineers of the California commission estimates 140 trains daily in 1940. Lately the Southern Pacific built a station at Glendale which is more accessible by automobile from Hollywood and Pasadena than is the Arcade station.

Applicants' engineering officers estimate that the station under the proposed Arcade plan will be adequate for the handling of a maximum of 120 trains daily, and for the handling of 200 trains a day if two more approach tracks are added. The abutments of the proposed Sixth Street viaduct can be extended to provide for two additional approach tracks when needed. Such piecemeal construction in undesirable and more expensive than if the whole were constructed at one time.

On the basis of 62 regular scheduled through and local trains a day arriving at or departing from the Southern Pacific and Salt Lake stations, defendants made a comparison of the Arcade station as a joint facility for the two roads with the stations referred to above. This made particular reference to the number of approach tracks and to the ratio of approach tracks to station tracks. The comparison follows:

A

| Station [1] | Tracks | | | Trains | | Trains per day | | Trains per busy hour | |
|---|---|---|---|---|---|---|---|---|---|
| | Station | Approach | Ratio | Per day | Per busy hour | Per station track | Per approach track | Per station track | Per approach track |
| Stub-end stations: | | | | | | | | | |
| Los Angeles (Arcade) | 12 | 2 | 6.00 | 62 | 8 | 5.17 | 31.0 | 0.67 | 4.0 |
| Buffalo (Lehigh Valley) | 9 | 3 | 3.00 | 16 | 3 | 1.78 | 5.33 | 1.33 | 1.0 |
| Detroit (Union) | 3 | 2 | 2.00 | 47 | 9 | 9.4 | 23.5 | 1.8 | 4.5 |
| Buffalo (D. L. & W.) | 6 | 2 | 2.00 | 56 | 5 | 9.33 | 28.0 | 1.33 | 4.0 |
| Chicago (Dearborn) | 12 | 4 | 3.25 | 120 | 16 | 9.2 | 30.0 | 1.2 | 4.0 |
| Chicago (LaSalle) | 11 | 4 | 2.75 | 240 | 24 | 18.2 | 60.0 | 2.18 | 6.0 |
| St. Louis | 32 | 6 | 5.33 | 252 | 55 | 7.9 | 42.0 | 1.7 | 9.2 |
| Chicago (C. & N. W.) | 16 | 6 | 2.67 | 274 | 46 | 17.1 | 45.8 | 2.9 | 7.6 |
| Boston (North) | 22 | 8 | 2.87 | 376 | 43 | 16.4 | 47.0 | 1.9 | 5.6 |
| Boston (South) | 28 | 10 | 2.80 | 621 | 90 | 22.2 | 62.1 | 3.2 | 9.0 |
| Through stations: | | | | | | | | | |
| Denver | 9 | 4 | 2.25 | 93 | 15 | 10.5 | 23.7 | 1.66 | 3.75 |
| Detroit (Mich. Cent.) | 11 | 4 | 2.75 | 85 | 15 | 7.73 | 21.25 | 1.36 | 3.75 |
| Minneapolis (G. N.) | 13 | 4 | 3.00 | 116 | 15 | 9.66 | 29.0 | 1.25 | 3.75 |
| Buffalo (N. Y. C.) | 19 | 6 | 3.00 | 158 | 18 | 13.16 | 26.3 | 1.5 | 3.0 |
| Kansas City, Mo | 16 | 8 | 2.00 | 210 | 34 | 13.13 | 26.2 | 2.12 | 4.2 |
| Combination: | | | | | | | | | |
| Chicago (Ill. Cent., Twelfth Street) | 8 | 3 | 2.67 | 76 | 6 | 9.5 | 25.3 | 1.0 | 2.67 |
| Omaha (Union) | 7 | 4 | 1.75 | 105 | 13 | 15.0 | 26.2 | 2.14 | 3.75 |
| Washington, D. C | 12 | 9 | 1.30 | 380 | 23 | 8.8 | 31.1 | 0.7 | 2.4 |

[1] Abbreviations of names of railroads: D. L. & W., Delaware, Lackawanna & Western; C. & N. W., Chicago & North Western; Mich. Cent., Michigan Central; G. N., Great Northern; N. Y. C., New York Central; Ill. Cent., Illinois Central.

In the cases of some of the large stub-end stations, such as the Chicago & North Western station at Chicago and the Boston South and Boston North stations, there is very heavy suburban traffic. In many such cases the trains are short, and the practice of placing more than one on a station track at a time increases the number of trains that can be handled during the rush hours. This practice would not be possible to so great an extent at the Arcade station, due to the predominance of long through trains. In some instances a large number of trains originate or terminate at through stations. Thus, a majority of the trains handled in the Kansas City Union Station and in the Michigan Central station at Detroit do not go through. At Kansas City the make-up of practically all through trains is changed. This involves switching over the throat tracks. In the case of the Kansas City station the number of approach tracks does not fully indicate capacity performance, as some of them are necessitated by the roads spreading out as the ribs of a fan in all directions close to the station. Six of the lines from the east are accommodated on two approach tracks. Certain of the stations, such as the Lehigh Valley at Buffalo and the Union Station at Washington, D. C., are so far ahead of present needs as to make them of little value as showing maximum capacity.

Should the Santa Fe erect a new station on or near the site of its present one, as manifestly it will seek to do if we approve applicants' plan, such a station would doubtless be wholly adequate so far as capacity to handle its own traffic properly is considered. If, after the construction of a passenger terminal according to applicants' plan, the question should arise whether the Santa Fe should be required to join in using the Arcade station, the adequacy of the latter as a union station and the period of time during which it would be adequate would be of importance. Applicants' testimony is to the effect that the Arcade station would be adequate for all three railroads for many years to come without enlargement of the arrangement as now planned. As indicated, the regularly scheduled trains of the three carriers at Los Angeles are about 84 in number. In addition, extra trains are run as travel demands. Not uncommonly do important trains arrive or depart from Los Angeles in as many as five sections. A union station at the present time should be able to handle 100 trains a day and 15 trains a busy hour. On this basis there would be for each approach track 50 trains a day and 7.5 trains a busy hour. Of the stations shown in the table, only the Boston South station has more trains daily for each approach track, and only that station, the St. Louis station, and the Chicago & North Western station at Chicago have more trains each busy hour for each approach track. Although the exhibit is based on the

number of regularly scheduled trains rather than the actual number handled, the comparison is significant. Moreover, it is apparent that should the Santa Fe use the Arcade station the time when additional approach tracks would become necessary would be much hastened.

Complainants question applicants' estimate of the train capacity of the Arcade station and contend that, irrespective of the number of approach tracks, the Arcade site is too narrow and too small to serve as a union station for the Southern Pacific, the Salt Lake, and the Santa Fe. They particularly criticize the adverse grade out of the station under the Arcade plan. The 1 per cent grade extends for a distance of 800 feet from the south end of the umbrella sheds, and a lesser grade extends for some distance beyond. This would slow up movements out of the station and, to some extent, movements in the reverse direction. The grades are less, however, than the ruling grades on the divisions over which engines entering and leaving the station operate. In their report the engineers of the California commission gave as their opinion that at the end of 20 years 140 trains a day might be expected, and that 12 station tracks with proper approach tracks would handle that number of trains, although 18 station tracks would be preferable.

There is no refutation of the testimony as to the adequacy of the station layout under the Plaza plan to handle all the trains of all steam carriers serving Los Angeles for many years, and its capacity to care for trains of any other carriers which may enter the city. Though the curved approaches to the throat tracks are not as desirable as straight approaches, the grades and curves would tend to slow up incoming trains and to accelerate outgoing trains and thereby make a fast throat. This plan also provides ample space for baggage and express and sufficient tracks to serve those facilities.

3. *Accessibility.*—The record contains much with respect to the relative accessibility of the two sites. Many important thoroughfares radiate from the Plaza.[7]

[7] Main Street and Los Angeles Street from the south pass by it, Sunset Boulevard from the west carrying traffic from Hollywood and a large part of the San Fernando Valley reaches it, and Spring Street, which merges into Main at Temple Street, and Broadway, through its tunnel connection with Sunset Boulevard, have ready access to it. North Broadway, leading to San Fernando Road, Pasadena, and the territory east, is close by; so are Macy and Alico Streets, which carry a heavy volume of traffic to the territory north and east of Los Angeles. Alameda Street, an extended thoroughfare from the south, and diagonal in direction with respect to Main Street, taps a large territory, and passes through the industrial section so within a block of the Plaza and immediately in front of the proposed Plaza Station. San Pedro Street, which fans out intermediate between Main and Alameda Streets, and serves a considerable portion of the city to the south, terminates near the Plaza, and under the Plaza plan would merge into Alameda Street in front of the station. Traffic from the west and southwest can reach the Plaza district through Figueroa Street and Sunset Boulevard and thereby avoid the crowded business section.

In the case of the Arcade station, the radiation of streets is not so favorable. To reach it vehicular traffic from the west and southwest must cross the business section or detour around over streets that are not through highways. The Arcade station is, however, somewhat closer to the center of the business, shopping, and hotel district than is the Plaza site, and can be reached by cab therefrom slightly more quickly. The Santa Fe station is not as well located with respect to arterial highways and with respect to the business, shopping, and hotel district as either the Arcade or Plaza sites.

In respect of accessibility by street-car lines the Plaza station would have an advantage, owing to the fact that more lines reach the Plaza district and would distribute more passengers without the necessity of transfer than is the case at the Arcade station. There are eight street-railway routes passing the Plaza with an aggregate length of 97.8 miles, as compared with two such routes serving the Arcade station with an aggregate length of 18.2 miles. At present the lines which serve the Plaza are some 750 feet from the concourse of the proposed Plaza station on Alameda Street, and persons reaching the station by street car would have to walk this distance. It would apparently be feasible to shorten this distance at least 300 feet, and permit access to the station from Los Angeles Street by extending the street-car tracks around the Plaza. The Santa Fe station is served by three street-car lines. There is no through street-car service between the Santa Fe and Arcade stations, and transfer between them is inconvenient except by cab. Probably 60 to 70 per cent of the steam-railroad passengers use street cars in going to or coming from the station. The engineers of the State commission considered the Arcade site as a location for a union station only slightly inferior, as respects accessibility by street cars, to the site for a station under the Sachse plan. In their opinion the distance of the Santa Fe site from the business district made it far the least desirable site for a union passenger terminal. As regards accessibility by street cars, they assigned to the Plaza, Arcade, and Santa Fe sites, considered as sites for union stations, weighted ratings of 60, 48, and 18, respectively.

Complainants and applicants stress the accessibility of the sites they favor to the interurban lines of the Pacific Electric. In 1922 those lines carried 88,006,000 passengers. This carrier handles most of the Southern Pacific's local business, including its Long Beach and Pasadena traffic. If the Arcade plan is carried out the Pacific Electric will bring all through trains from the northeast, east, and south into its station at Sixth and Main Streets over its own viaduct described above. At present a local line of the Pacific Electric extends from the Arcade station past the Electric company's sta-

tion to the Edendale section. Unless an elevated spur from the Pacific Electric viaduct were extended into the Arcade station as suggested, the inconvenient access to the viaduct and the lack of facilities at that point probably would cause many passengers transferring between the Arcade station and such lines of the Pacific Electric to go to the station at Sixth and Main Streets, and there transfer between the local and interurban lines of the latter. The local line mentioned does not reach without transfer the Pacific Electric's Hill Street station, the terminal for its lines to the west and northwest. The Santa Fe station is not served by the Pacific Electric; most of the passengers transferring between the two systems would have to make use of the local street cars or cab service. The street-car lines serving the Santa Fe station do not reach without transfer the station of the Pacific Electric at Sixth and Main Streets.

The present main line of the Pacific Electric to points northeast of Los Angeles, including Pasadena, Pomona, and San Bernardino, passes the Plaza station site on Aliso Street. The lines to the south do not pass the site, although under the present surface-track arrangements special trains coming therefrom could reach it, but would cross many busy streets at grade. Provision could easily be made to bring a local line of the Pacific Electric to the Plaza station grounds or to detour the Aliso Street line through the station. The former would be feasible even though the Pacific Electric constructed its proposed viaduct to the east bank of the river. Use of such local line by interurban passengers would generally involve a transfer at the Pacific Electric station. Under either the Plaza or Arcade plans, Pacific Electric passengers from the west and northwest using its Hill Street station would have to transfer to a local line.

4. *Convenience.*—One of the principal arguments for a union station as contrasted with separate stations is that it promotes to a greater extent the convenience of passengers and makes possible the handling of baggage, express, and mail in one location. The proportion of travelers reaching Los Angeles who transfer immediately to another railroad is not as large as at many cities. Most travelers who come into Los Angeles from a distance stop in the city or its environs for a short time at least, and for them a union station is less important. Applicants presented estimates that 97 per cent of Los Angeles passenger traffic is terminal rather than interchange traffic. For the first 10 days of June, 1923, the Santa Fe, the Salt Lake, and the Southern Pacific brought into Los Angeles 41,030 passengers, of whom 824, or slightly over 2 per cent, transferred

from one station to another. This does not include persons stopping over in Los Angeles, passengers transferring at Los Angeles but traveling on separate tickets to and from that point, or passengers transferring to and from the Pacific Electric. Since the war period the Santa Fe through service between the east and San Francisco has been much restricted, and its through service between San Diego and Los Angeles, in Southern California, and San Francisco has been discontinued. As a result there are undoubtedly many more transfers between the Santa Fe and Southern Pacific at Los Angeles than formerly. The California commission's engineers' investigations indicated that probably 10 per cent of the passengers carried by the steam lines normally transferred from one road to another. This does not include passengers transferring to or from the Pacific Electric.

Complainants regard the Arcade station itself as less convenient for passengers than the Plaza-plan station. To reach trains at the Arcade station, passengers must go through the waiting room down a 15 per cent incline to the subway 10 feet below, and up by a similar incline to the station tracks. Incoming passengers go down into the subway and thence out by an 18 per cent incline through the building to the sidewalk. At the station proposed for the Plaza, if the ticket office were on the lower level, passengers could come in from Alameda Street and go to trains with an ascent of 8 feet in the case of impaired clearance at the Alameda Street bridge, or an ascent of 13 feet and a descent of 5 feet in case full clearance were allowed. All ramps would be on 10 per cent grade, which is standard for such construction. Congestion of passengers arriving from trains would be greatly reduced by the two-level station. Street cars and autos could be reached from the upper level, and taxi stands and autos from the lower level.

The possible consolidation of baggage, express, and mail facilities through unification of passenger terminals would be much more convenient for the public than the maintenance of separate facilities at more than one station. The handling of baggage at a union station would be a convenience to passengers, and would result in an economy. Consolidation of mail facilities near the central post office in the Federal Building, which is close to the Plaza, would be of substantial benefit in handling the mails. In summing up the advantages and disadvantages of the sites considered by them for a union station, the engineers of the California commission in their report stated:

The Southern Pacific site stands first with regard to the collection and distribution of baggage, mail and express. This is because the origin and

destination of the express matter, (by far the largest item among these three), lies in a district closer to the Southern Pacific station.

5. *Segregation of passenger and freight traffic.*—Under either the Plaza or Arcade plans all freight traffic, except night switching of industrial freight, would be taken off Alameda Street and diverted to the river banks. Under the Arcade plan both passenger and freight traffic of the Southern Pacific and the Salt Lake would be handled on the east bank of the river, and Santa Fe freight and passenger business would remain on the west bank. If the Plaza plan is effectuated, all passenger traffic except that moving over the El Paso line will be routed along the west bank of the river. It is probable that considerable freight business would be so routed, although the east bank well could be used for some freight movements. At present the Pacific Electric hauls through the city no freight moving between its southern and northeastern branches, but delivers it to the Southern Pacific for transfer by way of Alameda Street. The northern transfer yard is at Macy Street, and the carrying out of the Plaza plan would necessitate its abandonment. A substitute service could apparently be had in connection with the Salt Lake as a switching line between Alameda Street and the Elliott Street transfer, but if the Southern Pacific should divert its freight traffic to the east bank, as proposed under the Arcade plan, it could itself perform the service.

The industrial district of Los Angeles is largely west of the river, and is reached by many spurs extending from the Santa Fe line westerly to the industries. Recognizing the possibilities this situation offers for unifying certain freight facilities on the west bank of the river, the California commission's engineers in their report recommended the establishment of a union less-than-carload freight station at the Santa Fe terminal site. The order of the California commission for the establishment of union terminals did not include provision for any unified freight facilities. The California commission engineers also noted the greater possibility of segregating passenger and freight operations on opposite sides of the river under the plan for a union station at the Arcade site than under the Plaza plan there considered. Under the Plaza plan there would necessarily be some conflict in passenger and freight operations on the west bank of the river, though this would be minimized if provision were made for freight operation on the east bank.

6. *Station site as barrier to city traffic.*—Complainants make comparison of the Arcade and Plaza plans with respect to the extent to which the station grounds and track layout obstruct traffic or act as

a barrier between related sections of the city. This comparison favors the Plaza site.[8]

Upon exception and argument applicants state that under their plan the handling of through Southern Pacific freight trains on the east bank of the river will eliminate the grade crossings at North Main and North Spring streets by its line on Redondo Street. The same arrangement is equally possible under the Plaza plan. Indeed, applicants' estimate of costs for the latter plan provides for an east-bank freight line.

7. *Consonance with civic plans.*—The Plaza harmonizes with the civic plans of Los Angeles much more closely than does the Arcade plan. The city through its planning commission undertook a study to determine the proper location for its administration or civic center. The report of that commission found that the Plaza is the center of population of the Los Angeles metropolitan area, that it is the geographical center of that area, and that it is the point of convergence of the largest number of streets and highways. The planning commission recommended that the civic center be established in the area bounded by First Street on the south, Los Angeles Street on the east, Sunset Boulevard on the north, and Hill Street on the west. The Plaza proper lies within this area, and the Plaza station here proposed would adjoin the area on the east. The city council approved the report, and has proceeded to acquire the necessary lands within the described area for the erection of public buildings and the relocation of Spring Street and North Broadway. In June, 1923, the voters of Los Angeles by an overwhelming majority authorized the location of a proposed new city hall in the

[8] The district between Alameda Street and the river is largely industrial. There is a heavy trucking traffic between it and that part of the city west of Central Avenue. In addition there is a heavy vehicular traffic over the Fourth Street viaduct between the east and west sides of the city. The Arcade station blocks Fifth Street completely. Under applicant's plan undesirable crossing situations would remain at Fourth and Sixth streets. To accomplish the depression of Sixth and Alameda Streets necessary to the viaducting of the approach to the Arcade station grades of 3 per cent would be introduced. An industry track from north on Alameda Street would extend south down one of these grades across Sixth Street and would turn down south into the Los Angeles Market. As above noted, one track other than those on Alameda would remain across Fourth Street north of the station to provide access to the railway-mail post office, express yard, and the plant of the Los Angeles Ice & Cold Storage Company. Defendants estimate the movements over this track to the railway-mail post office at 8 to 10 a day. The same track connects with the tracks on Alameda Street near Third Street and, together with a connection between the Alameda Street tracks and the throat of the yard, would provide a means of running around the station yard without blocking the throat tracks. To the extent that switching at the railway-mail post office, express yard, and cold-storage plant from time to time involved moving cuts of cars over the Third Street switch connection, or to the extent that this facility might be used to run around the station yard, the heavy traffic on Third Street would also suffer interference. There are no streets crossed at grade at the Plaza site, except for the industrial freight line, which would remain on Alameda Street in either case. The station site would lie between two traffic arteries, but would not obstruct traffic, as there is comparatively little between the sections immediately north and south thereof.

area just described in preference to a location south of Ninth Street, west of Los Angeles Street, north of Washington Street, and east of Grand Avenue. Within the civic center area at the present time are several public buildings, including the county courthouse, the Hall of Records, an additional building used for county offices, the city hall annex, and the Federal Building. A new Hall of Justice is being erected within the area at North Broadway and Temple Streets. Public authorities own other lands within the area, and still more land therein is now being condemned for various public purposes. The Arcade station is about a mile distant from the civic center.

The character of improvements in the Plaza district, particularly near the site of the proposed Plaza station, is now not as good as at the Arcade station site. A large foreign population lives near the Plaza, chiefly Mexican and Mongolian. Under the proposed Plaza plan the acquisition of the necessary land would dispossess most of the Mongolians in that immediate district. A station on the Santa Fe site would not harmonize at all with the city's civic center plans. This site is next the river surrounded by an industrial district. It is also about a mile from the civic center.

8. *New money costs and total investment.*—The California commission sought to prove that the net new money required for a union station at the Plaza need not exceed that necessary to carry out applicant's plan and to provide separate and adequate facilities for the Santa Fe. It endeavored to establish that if such a union station were built the total investment in passenger-station facilities would be less than if a joint station were built for the Southern Pacific and the Salt Lake and a separate station for the Santa Fe. The California commission's computations are summarized in the following table. Some items which would be the same under either plan, with the exception of the Southern Pacific coach yards, are not included.

| Description | Applicants' plan | Santa Fe | Total | Plaza |
|---|---|---|---|---|
| 1. Passenger station and facilities | $1,483,059 | $1,500,000 | $2,983,059 | $6,476,000 |
| 2. Coach yards (both plans) | 416,780 | | 416,780 | 416,780 |
| 3. New trackage and connections | 1,590,380 | 120,000 | 1,710,380 | 326,600 |
| Subtotal, 1 to 3 | 3,490,219 | 1,620,000 | 5,110,219 | 7,219,380 |
| 4. Net salvage value of released property: | | | | |
| Southern Pacific station site | | | | [1] 3,000,000 |
| Santa Fe station site | | | | [1] 950,000 |
| Net | | | 5,110,219 | 3,269,380 |

[1] Credit.

Taking the same subtotals and adding thereto the estimated value of the existing station facilities, the State commission computes the total investment in passenger-station facilities as follows:

| Description | Applicants' plan | Santa Fe | Total | Plaza |
|---|---|---|---|---|
| 1-3. Subtotal | $3,490,219 | $1,620,000 | $5,110,219 | $7,219,380 |
| 5. Existing station facilities | 4,805,000 | 950,000 | 5,755,000 | |
| Total | 8,295,219 | 2,570,000 | 10,865,219 | 7,219,380 |

In their brief applicants have revised these figures, with the result that their estimates of the new money required are $3,990,219 for the separate facilities, as against $10,880,180 for the Plaza plan, and their totals for investment in station facilities are $8,690,219 for the separate facilities, as against $11,617,180 for the Plaza plan.

Some of the points of divergence with the State commission's estimates will be noted. There is no dispute as to the propriety of applicants' items 1, 2, and 3, nor as to item 2 under the Plaza plan. Applicants' revision includes but $500,000 for separate station facilities for the Santa Fe. There is nothing of record to support this figure other than the unsworn statement of counsel for the Santa Fe at the hearing and on brief that this amount would be sufficient to provide it with adequate station facilities. The figure of $1,500,000 used in complainants' computation as the cost of a separate Santa Fe station was named by an engineer of the California commission as the assumed amount the Santa Fe would expend in providing such facilities. He also testified that at present prices the cost of facilities equal to those at the Arcade station would run well over a million dollars. The Arcade station contains in the wings of the building 300,000 cubic feet of office space which the Santa Fe contends is unnecessary to an adequate station. If the Santa Fe builds a separate station it will probably expend at least the amount estimated by complainant, but for present purposes we may assume that it would provide station facilities equal to those at the Arcade station minus the office space. Making suitable deduction for such space, the record warrants the use of $1,000,000 as the reasonable cost of separate and adequate Santa Fe station facilities.

Applicants' computation omits $120,000 for double tracking the Santa Fe from North Broadway to Aliso Street on the ground that such construction would be unnecessary if the Plaza plan is not carried out. Unless the west approach to the proposed Macy Street viaduct is extended to pass over the Santa Fe passenger line between Alhambra Avenue and Aliso Street, the track construction contemplated by this item will have to be made regardless of which

station plan is effectuated. The Santa Fe states that the item relates to grade separation only and is no proper part of the expense of a passenger station, whether union or separate. We will omit that item from both the Plaza and separate-station plan estimates. Defendants' figures make several additions to Plaza item No. 1, as follows:

| | |
|---|---|
| Additional allowance for engineering and contingencies | $165,000 |
| Additions to station building | 190,000 |
| Division offices | 190,000 |
| Express building | 200,000 |
| Increase in land-value estimate | 2,902,800 |
| Total | 3,647,800 |

Applicants' cost figures for a joint Southern Pacific-Salt Lake station include an item of 27 per cent of construction costs, to cover 5 per cent for engineering, 7 per cent for interest, and 15 per cent for contingencies. The State commission has allowed 20 per cent for these items. To provide a comparable basis for comparison defendant would increase the allowance by 7 per cent of $2,353,300, the construction costs as estimated by the State commission, or $165,000. Applicants' revised estimate adds $190,000 to the State commission's estimate of $1,500,000 for a station building. This is based upon a cost of $120,000 for the concourse between the head house and the stub end of the tracks, plus $30,000 to cover exterior features such as ramps and subway construction in Alameda Street, and an allowance of 27 per cent of such additions for engineering, interest, and general contingencies. The head house of the station contemplated would be of steel-frame construction, similar in type to the head house of the Arcade station, and would be 400 feet in length, 120 feet wide, and 60 feet in height. The commission estimate of 50 cents per cubic foot would produce a cost of $1,440,000 for the head house. Assuming that the concourse and exterior features would cost $150,000 additional, such amounts would be amply taken care of by the $60,000 balance of the estimate and by the allowance for engineering, interest, and general contingencies, which as increased amounts to $405,000.

The present Arcade station contains 300,000 cubic feet of space used for division offices. The Plaza plan apparently makes no such provision. Assuming like space were provided in the Plaza station building at a cost of 50 cents per cubic foot plus 27 per cent for engineering, etc., complainant's figures should be increased $190,000 as indicated.

The California commission's figures contain no provision for an express building, apparently on the theory that it is not defendants' duty to provide that facility. But the plan is not comparable

to the Arcade plan without an express building. Whether defendants or the express company build it, the value thereof would still form a portion of the base on which a fair return should be paid by the public either in railroad or express rates. Defendants' estimate is that $20,000 would be necessary for this purpose.

The land required for the Plaza plan station would have an area of 1,780,286 square feet. The cost, according to the State commission's figures, would be $2,597,200.*

A consideration of the land values of $2,017,365 and $3,490,500 on the bases of the unit prices named by the deputy county assessor and those used by defendants, respectively, persuade us that under the circumstances the former is too low and the latter too high. An average of the two, $2,753,932, would be a fairer figure. Increasing this amount by 25 per cent, to cover cost of acquisition, and adding 12 per cent to the total for interest during construction, the resulting figure would be $3,855,505. The evidence of record justifies the conclusion that this amount should be allowed as the probable future cost of the station lands under the Plaza plan.

In revising the State commission's figures defendants have added to Plaza item 3 $750,000 to provide freight trackage on the east bank of the river for the Southern Pacific substantially similar to that under applicants' plan. Assuming that Southern Pacific freight would be so handled on the east bank rather than on the west bank at less cost for construction, the costs comparable with those shown under the applicants' plan would not amount to $750,000. The only construction covered by applicants' item 3 is of Salt Lake units 1 and 2 and Southern Pacific unit 2. The last two units, with costs

* This apparently consists of a base figure of $1,954,480, plus approximately 18.6 per cent for cost of acquisition and 12 per cent of the total for interest during construction. The base figure represents twice the assessed value for the assessment year 1924–25. Assessments of land in Los Angeles County are customarily made at 50 per cent of the estimated fair market value. The testimony of the deputy county assessor, who for years has made the assessments on property in the industrial district, including the Plaza site lands, indicates that the fair market value of the land at the time of the hearing was $2,017,365. A witness produced by defendant testified to much lighter land values in the Plaza district, and said that the asking price of land therein would be increased 25 per cent if a station in that section were ordered. On this basis defendants claim the cost of the necessary lands would be $5,500,000, or $2,902,800 in excess of the amount estimated by the State commission. Defendants' figure is based upon the assumed acquisition of an area of 2,300,000 square feet, which is larger than that contemplated by the Plaza plan. Applying defendants' unit prices to the proper area, a base cost of $3,490,500 results. An allowance for assumed increase in asking price other than as covered in the allowance for cost of acquisition does not seem proper. At the argument the parties stipulated that the Southern Pacific has recently acquired title to the so-called Hanchett lands, about 25 acres of which would be necessary for a portion of the station site under the Plaza plan. These lands were acquired in connection with the acquisition of the El Paso & Southwestern system. Counsel for the Southern Pacific at the argument stated that the El Paso & Southwestern paid $6,250,000 for the Hanchett lands. The report of the California engineers indicates that these lands have an area of 1,500,000 square feet, or approximately 34.4 acres. The record with respect to this transfer does not enable us to accord much weight to the figures quoted.

of $86,935 and $326,498, respectively, would be required under the assumption made. But the balance of the $750,000 would not be required for merely that portion of Salt Lake unit No. 1 necessary for freight service. So far as can be determined from the data of record the only construction required would be the double tracking of the Salt Lake line from Alhambra Avenue to a point midway between Macy and Aliso Streets and the provision of double-track turnouts at the south leg of the Alhambra wye and at Elliott Street. Apparently $50,000 would cover these costs, making a total of $463,433 for the east-bank freight-line construction.

Revising the State commission's estimate in line with the conclusions reached, we produce the following results:

| Description | Applicants' plan | Santa Fe | Total | Plaza |
|---|---|---|---|---|
| Passenger station and facilities (item 1) | $1,463,059 | $1,000,000 | $2,463,059 | $9,356,000 |
| Increased engineering, etc | | | | 165,000 |
| Division office space | | | | 190,000 |
| Express building | | | | 200,000 |
| Increased land allowance | | | | 1,238,305 |
| Coach yards (item 2) | 416,780 | | 416,780 | 416,780 |
| Trackage and connections (item 3) | 1,590,380 | | 1,590,380 | 206,680 |
| East bank freight line | | | | 463,433 |
| Subtotal | 3,490,219 | 1,000,000 | 4,490,219 | 9,256,118 |

Applicants' revision of the California commission's statement reduces to $737,000 the item of $3,000,000, which represents the salvage value of property at the Arcade site to be released from passenger service in the event the Plaza plan is carried out. This reduction is based upon the anticipated reversion of a portion of the Arcade site, known as the Wolfskill tract, which was given to the Southern Pacific by grant deed, subject to the condition that it should be used for a general railroad passenger station and not otherwise and should revert to the grantors upon breach of the condition. It is well established that the right of a carrier or the public authorities to make such change in the location of a railroad station as may be required to provide reasonable and adequate service can not be controlled or prevented by private contract or by the fact that private citizens in the expectation of the continuance of a station at a particular place have made donations of land or money. 33 Cyc. 143, and cases there cited. A condition subsequent in a deed, providing for the reversion of real property in case any certain act is done or omitted, is inoperative where the doing or omission is compelled by public authority.[10] The reduction of the item men-

[10] 18 C. J. 375; *Scoville* v. *McMahan*, 62 Conn. 378; *Doe dem. Marquis of Anglesea* v. *Church Wardens of Rugely*, 6 Q. B. 107; 2 *Washb. Real Prop.* 15; *Fidelity Ins. Trust & Safe Dep. Co.* v. *Fridenberg*, 175 Pa. St. 500; and *German E. P. Congregation* v. *Schreiber*, 277 Mo. 113.

tioned is therefore not justified. But, even assuming reversion, the basis for the figure of $737,000 used in applicants' brief does not appear. The area of the Wolfskill tract is 81 per cent of the total area of the Arcade station grounds, but its value based on 1918 figures is 62.4 per cent of that of the total area. If the total salvage item of $3,000,000 be apportioned on the basis of relative land values as above, the value of the non-Wolfskill property would be $1,128,000. But the station building, estimated to have a salvage value of $159,000, is not located upon the Wolfskill tract. The record does not admit of determining with exactness the value of the property not affected by the reversionary clause. But if the value of the land alone be taken on the basis of $5.50 per square foot as testified by the deputy county assessor and apportionment is made on the basis of the relative values in 1918, the value of the non-Wolfskill lands is $1,337,719. The record amply warrants the conclusion that even if the anticipated reversion should occur, salvage values of at least $1,250,000 would remain.

The item of $950,000, representing the value of Santa Fe station lands that would be released from passenger service if a union station were built at the Plaza, is omitted from applicants' revision of the California commission's comparative statement of new money costs. This is on the theory that these lands would not be sold, but would be retained in railroad ownership for use in freight service. The station grounds front on Santa Fe Avenue and adjoin the freight yards. The less-than-carload freight station of the Santa Fe is on the opposite side of Santa Fe Avenue somewhat south of the present station building. These lands if released would be very desirable as industrial property. But assuming that the Santa Fe would retain them for freight purposes, their value would still be a proper deduction in estimating the new money costs of union passenger station facilities at the Plaza. The virtual purchase of additional lands for freight service should not be counted as a cost of passenger facilities in making such comparison between the different projects.

Defendants' computations reduce complainants' figure of $4,805,000, representing the value of existing station facilities of the Southern Pacific to $3,784,000. The latter figure takes the salvage item of $3,000,000 as the value of the land, and adds thereto for facilities the 1916 valuation figure of $784,815 claimed by the Southern Pacific. The item of $3,000,000 has not been fully explained of record, nor its elements revealed, but apparently it is based upon the assumption that the Southern Pacific station and facilities would be demolished and that the value of the land would be much less for industrial sites than its value as a single piece for a station site. Present

values are much higher than those of 1916. If present-day values are taken as the value of these properties in railroad use, the figure of $4,805,000 does not appear excessive in the light of the evidence of record. At one of the hearings before the California commission in 1917 the Southern Pacific claimed a value of $5,000,000 for the facilities between Fourth, Sixth, Central, and Alameda Streets. Revising the State commission's cost comparisons on the basis of these conclusions, the results are as follows:

| Description | Applicants' plan | Santa Fe | Total | Plaza |
|---|---|---|---|---|
| Subtotal | $3,490,219 | $1,000,000 | $4,490,219 | $9,256,118 |
| Salvage value of released property (item 4): | | | | |
| Southern Pacific station site | | | | [1] 3,000,000 |
| Santa Fe station site | | | | [1] 860,000 |
| New money required | 3,490,219 | 1,000,000 | 4,490,219 | 5,396,118 |
| Subtotal | 3,490,219 | 1,000,000 | 4,490,219 | 9,256,118 |
| Existing station facilities (item 6) | 4,805,000 | 950,000 | 5,755,000 | |
| Total investment, property devoted to passenger terminal uses | 8,295,219 | 1,950,000 | 10,245,219 | 9,256,118 |

[1] Credit.

One other element of cost should be noted. The Plaza plan makes provision for accommodation of additional lines of railroad and for many additional trains with but slight expenditures. As indicated above, the approach-track arrangement under the Arcade plan would need amplification if the number of trains in and out should substantially exceed 120 per day. Applicants' plans provide for construction, if and when necessary, of two additional approach tracks on trestles from the east bank of the river. The cost of such construction would be practically equivalent to that of the proposed viaduct, estimated at $2,087,322. If ultimate cost be considered and this item included, the additional investment required under the Arcade plan would amount to approximately $6,577,500, as against about $5,306,000 under the Plaza plan, and the total value of property in passenger service would become about $12,332,500, as compared with approximately $9,256,000. With only the Southern Pacific and the Salt Lake in the Arcade depot, viewed by present conditions, it is not likely that expansion of the approach to four complete tracks across the river would become necessary for some years. It might sooner become necessary to construct two additional short approach tracks to facilitate station switching, long enough for any passenger train, but they would not require new bridges over the river. The record furnishes no satisfactory basis for determining the cost of such partial expansion.

The cost of passenger facilities under the carriers' plans as above estimated would need some revision if the Santa Fe should use the Arcade station in common with applicants. The cost of a separate

station for the Santa Fe would be eliminated, and provision should be made for connections with the Salt Lake at Hobart and at Humboldt Street on the east bank of the river. The cost of these connections probably would not exceed $80,000. An additional express building with a floor area of 10,000 square feet would be necessary under this plan. Such a building would probably cost about $75,000. If a site were provided south of the present station auto park, the land would probably cost $80,000, not including land necessarily acquired but not needed for an express-building site. On this basis the new money cost would be about $3,725,000 with two approach tracks and $5,812,500 when two more such tracks should be added. Similarly the total investment would be $8,530,000 under the first assumption and $10,617,000 under the ultimate plan. If a viaduct for all four tracks were provided at the start, as would seem to be advisable if the Arcade station were converted into a union station, the new money cost and total investment would possibly be somewhat less than the ultimate figures shown. These figures do not include the cost of providing more accessible engine terminals and coach yards for the Santa Fe or better means of access from their present facilities.

9. *Expense of operation.*—The record contains some evidence bearing on the saving in operating expense under the Plaza plan. Most of such evidence does not relate to the specific Plaza plan now before us. One comparison is pertinent. Under the Arcade plan, according to an engineering witness, locomotives would have to develop 6,755,570 foot-tons daily as against 4,885,700 foot-tons under the Plaza plan. On this basis the witness estimated that 38 per cent more fuel would be used in the operation of passenger trains within the terminal under the Arcade plan than under the Plaza plan. It is clear that the movement of trains and equipment into and out of the Arcade station over the proposed viaduct would be a much more expensive operation than would be encountered at the Plaza plan station.

10. *Period of construction.*—Applicants state that the Arcade plan could be carried out within a period ranging from 18 months to two years. Completion of a union station at the Plaza would necessarily take somewhat longer, because of the necessity of first making detailed plans. There might be further delay as a result of litigation. Three years would probably be required to carry out the Plaza plan.

11. *Elimination of Pacific Electric grade crossings.*—The operation of Pacific Electric cars and trains on the city streets now creates a more hazardous if not a more inconvenient condition than any caused by the operation of steam trains at grade. As indicated, if the Southern Pacific-Salt Lake plan is approved, the Pacific

Electric will construct an elevated road from its Sixth Street station to the east bank of the river and to its right of way at Fourteenth Street. Such construction would make possible the elimination by this carrier of 16,199 daily grade crossing movements at some 56 intersecting or connecting streets. The same construction would be possible under the Plaza plan, though not so probable, as arrangements would have to be made for the Pacific Electric to obtain the necessary right of way on the east bank, and such construction would divert most through trains from the Plaza location. The retention of the Aliso Street line at grade would perpetuate numerous grade crossings, though it would be possible to construct an elevated line from the river at Aliso Street or from the proposed Plaza station at Aliso Street down San Pedro Street to the elevated line paralleling Sixth Street. In brief, under the Arcade plan the Pacific Electric grade crossings would be greatly minimized within a reasonable construction period. Its right of way from Main Street to the river is now 90 per cent complete. Under the Plaza plan similar elimination could be had though not now provided for, but its accomplishment would probably be longer delayed.

### FINANCIAL ABILITY OF CARRIERS

The Southern Pacific plans to finance its portion of the costs of the Arcade project as set forth in the applications out of current funds, without the present issuance of securities. Later it may seek our approval to capitalize the investment. Similarly, the Salt Lake intends to meet its portion of the cost of such plan out of current funds or out of advances made from time to time by the Union Pacific Railroad Company or the Oregon Short Line Railroad Company, or both, which together own the entire capital stock of the Salt Lake. Subsequently, the Salt Lake or its controlling carriers may ask approval for the permanent financing of such expenditures, together with others made in recent years.

Income balances of defendants transferred to profit and loss are as follows for the calendar years enumerated:

| Carrier | Balance |
|---|---|
| Southern Pacific Company:[1] | |
| Year 1921 | $27,321,326.98 |
| Year 1922 | 24,902,729.72 |
| Year 1923 | 30,012,397.42 |
| Santa Fe:[1] | |
| Year 1921 | 19,368,868.23 |
| Year 1922 | 18,627,018.71 |
| Year 1923 | 21,778,830.31 |
| Salt Lake: | |
| Year 1921 | [2] 1,286,117.97 |
| Year 1922 | [2] 1,283,676.43 |
| Year 1923 | 237,165.56 |

[1] The Southern Pacific charges its dividend payments to profit and loss, while the Santa Fe charges them to income.
[2] Loss.

Of the Southern Pacific figure for 1921, approximately $26,000,000 arose through the disposition of oil properties. In 1922 the Santa Fe received $17,000,000 in a settlement with the United States Railroad Administration.

None of the three carriers has any outstanding notes payable. The current assets of the Southern Pacific include $17,000,000 in cash; of the Santa Fe, $25,000,000; and of the Salt Lake, $315,000. The investments of the Southern Pacific include about $30,000,000 in Government bonds, and of the Santa Fe some $32,000,000 in Government bonds and notes. The Salt Lake suffered deficits in 1921 and 1922, but appears to be growing stronger. Its stocks and bonds are all owned by the Union Pacific or affiliated companies, and are not on the market. The Union Pacific has no notes outstanding, owns $38,000,000 of Government bonds and other Government securities and has cash assets of $12,000,000. The Southern Pacific, Santa Fe, and Union Pacific have been in a strong financial condition since 1917, and are now in such a condition. Their bonds are selling on favorable terms, and their stocks command a good price. The record indicates that neither the Southern Pacific nor the Santa Fe would experience any financial embarrassment if called upon to finance a capital expenditure of $10,000,000 for new passenger-terminal facilities in Los Angeles, and that the Union Pacific would not experience any such embarrassment in assisting the Salt Lake to bear its share of a union passenger terminal development entailing such a cost. At the argument counsel for applicants stated that any order we might enter in these proceedings would not impair their financial ability to perform their duty to the public.

An offer by a former owner of lands in the Plaza district to finance a union depot if built in that section was received at the hearing.

SUMMARY

The service afforded by each of the present passenger stations of the Salt Lake and the Santa Fe is unreasonable and inadequate, and those carriers are under the immediate necessity of, and contemplate, expending considerable sums of money in providing reasonable and adequate facilities in lieu of those now owned and used. The clearly established necessity of eliminating from Alameda Street all railroad train service, except industrial freight-switching service, is undisputed. Such elimination of train service will force the Southern Pacific to provide other means of access to its Arcade station or to abandon that station and provide other facilities in its stead. Either course will be attended by the expenditure of substantial

amounts of money. The carriers named can provide reasonable and adequate station facilities and the expense involved will not impair their ability to perform their duties to public. This brings us to a résumé of the advantages and disadvantages of the various plans for station facilities hereinbefore detailed.

The Arcade plan for a joint station for the Southern Pacific and Salt Lake, proposed in Finance Docket No. 3569, makes no provision for the Santa Fe and leaves it to provide separate facilities for itself. This plan has certain advantages and is subject to certain decided objections. The terminal planned would doubtless be adequate for the Southern Pacific and Salt Lake for a number of years, and any separate station which the Santa Fe might erect would doubtless be adequate for its needs and those of the public. Aggregating the separate Arcade station and a Santa Fe station, their accessibility by vehicles, street-car lines, and interurban lines is poor, though the Arcade station alone is not so deficient as respects street and interurban car lines. Considering the convenience to passengers and in the handling of baggage, mail, and express, the Arcade plan with separate Santa Fe station would be deficient. Segregation of passenger and freight routes on opposite sides of the river would not be possible under the Arcade plan as proposed. This objection standing alone is not serious, but the segregation would be preferable. The Arcade station would act as a barrier to vehicular traffic between the industrial district and the business district at Fifth Street. To an appreciable extent the proposed arrangement would retard the movement of traffic at Fourth and Sixth Streets and possibly at Third Street. The depression at Sixth Street would affect travel on Alameda Street.

Separate stations at the Arcade and Santa Fe sites do not fit in well with the civic plans of the city. The new money cost of terminal facilities would be approximately $4,500,000, and the total investment $10,500,000. To this should be added the cost of additional approach tracks as they become necessary. With only the Southern Pacific and the Salt Lake using the Arcade station, the full increase to four complete approach tracks would probably not become necessary for years, although some expansion might be needed in the not distant future. The operation of trains on a long viaduct and into the Arcade station on a descending curve, together with the necessity of maintaining coach yards and engine terminals at a considerable distance from the station, are undesirable, and will necessarily result in greater expense than would be incurred under a more desirable layout. Probably two years would suffice to complete erection of necessary facilities if the Arcade plan were approved. Numerous Pacific Electric grade crossings could be elimi-

nated economically and expeditiously following approval of the Arcade plan.

Though applicants stated that the Arcade station plan could conveniently include the Santa Fe, they have made no provision for its inclusion, and the Santa Fe is unwilling to participate in the use of such a station. We do not have the details of such changes in the proposed facilities as would be necessary, or their costs. Such use of the station would apparently remove in various degrees several of the substantial disadvantages incident to the Arcade plan as proposed, although others might be introduced thereby. With sufficient approach tracks the Arcade station could accommodate all three lines for a number of years. Though four complete approach tracks might not have to be provided immediately, some partial expansion of the proposed approach arrangement likely would be necessary, and probably at the start the viaduct should be built to accommodate four complete approach tracks. The narrowness of the site makes the Arcade station particularly dependent upon ample approach facilities.

Inclusion of the Santa Fe would improve the accessibility of the passenger facilities. A union station at the Arcade site would not be as accessible to vehicular traffic as either of the Plaza plans, and would be a little inferior as respects street-car service. As respects interurban lines, the relative accessibility of union stations at the Arcade and Plaza sites depends largely upon what changes are made in the lines of the Pacific Electric and in the manner of operating its trains into and out of the city. The advantage in this respect would seem to lie with a union station at the Arcade site. This does not attempt to pass upon the relative merits of different terminal arrangements for such interurban lines.

As respects the convenience to passengers which would flow from a unification of terminals, a union station on the Arcade site would be as good as one at the Plaza, and in handling baggage, mail, and express would probably be more convenient.

The possibility of segregation of passenger and freight routes is greater under an Arcade union plan than under any other that has been presented. The net new money cost of an Arcade union terminal based on the provision of a four-track approach and appropriate facilities would approximate $5,000,000,[11] and the total investment $11,000,000. Assuming only a partial expansion of the approach-track arrangement for the present the new money cost would probably not greatly exceed $3,500,000 and the total investment $9,500,000. The expense of operation would probably be somewhat greater under

[11] Including $500,000 for necessary changes in the Santa Fe facilities and deducting the value of its site.

this arrangement than under the others. The other advantages and disadvantages of a joint station at the Arcade site would obtain with respect to an Arcade union station also.

Any union station erected in the Plaza district would be easily accessible from the main lines of the three steam roads, would be adequate to handle all their present traffic and would admit of ready and relatively inexpensive expansion as traffic developed. The accessibility by interurban lines would not quite equal that of a union station at the Arcade site. Except with respect to the collection and distribution of express matter, unification of passenger-terminal facilities at the Plaza would provide all the conveniences for the public afforded by a union Arcade station. If a union station were built at the Plaza, segregation of passenger and freight routes on opposite sides of the river would not be possible. Though segregation would be preferable, this would not be a serious objection. If an east-bank freight line were provided as in applicants' plan the passenger and freight routes could be so arranged as to prevent serious interference between cross lines of high-density passenger and freight traffic. Except with respect to the station-approach bridge over Alameda Street and the high viaduct for vehicular traffic across the river at Aliso Street, a union station under the Plaza plan would not introduce bad crossing situations. It would not act as a barrier to traffic between sections of the city. The importance of Alameda as a trucking street to the industrial district would diminish if the Southern Pacific should cease to maintain its freight station adjacent to the River station yards.

A union station at the Plaza would harmonize with the civic plans and desires of the city. If a union station were built at the Plaza under substantially the plan presented by the California commission, the new money necessary to be raised, less the value of property released from passenger service, would be about $5,500,000. The total investment in passenger facilities under the Plaza plan would approximate $9,500,000. If consideration be taken of the acquisition by the Southern Pacific of the so-called Hanchett lands, about 25 acres of which would constitute approximately two-thirds of the Plaza station site, the new money cost would be reduced to approximately $3,500,000, and the total investment possibly increased to $12,000,000.[12]

[12] The new money cost specified is computed on the basis of deducting as the value of such portion of the station grounds about one-half of the total cost of station lands as hereinbefore determined. The total investment figure just named is determined upon the assumption that the cost of the Hanchett lands to the El Paso & Southwestern was as stated upon argument by counsel for the Southern Pacific, and that the portion thereof necessary for Plaza station grounds should be assigned a proportionate cost of $4,500,000. In using this latter figure we make no assumption as to its reasonableness or propriety.

Unification of passenger-terminal facilities at the Plaza could be arranged so as to result in certain operating economies, but the extent thereof does not appear upon the record. With coach yards as planned for the Southern Pacific and Salt Lake and the existing Santa Fe coach yards, the expense of operation might be somewhat less than under the Arcade plan. Three years would probably be necessary to complete construction under this plan. If the Plaza plan rather than that proposed by applicants were carried out, the elimination of Pacific Electric grade crossings would be delayed, for the reason that there is no specific plan therefor in connection with the Plaza project.

It is clearly inferable from the record that the Santa Fe does not consider the Arcade site ample in size for the most convenient handling of the trains of all three carriers, and that so far as it is concerned operation into the Arcade station would be highly unsatisfactory. The Arcade site could be expanded by closing or deflecting important streets or by elevating the station yard. Assuming such expansion, the expenses of an Arcade station, either joint or union, would be considerably greater than for equally adequate facilities under some other plan. Adequate and convenient union passenger-terminal facilities can be provided in the Plaza area at a considerably less net new money cost than less adequate and convenient facilities under applicants' Arcade plan, and for approximately the same net new money cost as a union passenger terminal of more questionable merit on the present Arcade site.

In view of the right of the State, under the qualifications noted, to determine with respect to various plans for union-terminal facilities the question of adequacy and reasonableness, without clear basis we will not override the determination of its authorities in that regard. The official commitment of the city in favor of a union station in the general area of the Plaza is also entitled to weight on the question of public convenience and necessity. If, upon investigation, it appeared that the State authorities were making unreasonable demands or placing undue burdens upon interstate carriers to the impairment of their ability to perform their duties to the public, it would clearly be our duty under *R. R. Comm.* v. *Southern Pacific Co.*, *supra*, to refuse our consent to the consummation of the project. But where, as here, it appears that the carriers of their own necessities will in any event shortly expend considerable sums for adequate station facilities, and that after fair and painstaking investigation the State authorities have selected a general site as that required by the public convenience and necessity whereon for substantially the same amounts the carriers can provide adequate and convenient union-station facilities, we think the deter-

mination of such authorities should be entitled to considerable weight. The order of the Railroad Commission of California did not specify any particular site within the general area defined nor require a particular plan to be followed. The order required that the defendants submit plans for approval and, when approved, to build in accordance therewith. The defendants at no time made any effort to comply with the order. When the general outlines of the plan are formulated, a spirit of willingness to do and cooperate on the part of all concerned—carriers, city, and State—will overcome many obstacles which now loom large. The record contains some reference to monumental stations and civic pride. The law aims to provide an adequate transportation system with adequate and convenient facilities, and not to burden that system with facilities much more than adequate, or designed less to meet the reasonable requirements of the public than demands based chiefly on aesthetic considerations or advertising value. If such elements are to be provided for in measure beyond that incidental to reasonably adequate and convenient facilities of a character appropriate to the city served, the added expense may not be forced upon the carriers.

For orderly procedure it appears preferable that appropriate certificates in connection with the proceedings now before us should be issued subsequent, rather than prior to, the making of an order by State authority, but that the securing of favorable action on our part be made a prerequisite to the effectiveness of any State order. Such a procedure would enable us to pass upon a specific proposal and obviate the semblance of consenting in advance to construction the extent and expense of which could only be surmised. We think the expression of the Supreme Court in *R. R. Comm.* v. *Southern Pac. Co.*, *supra*, at pag 346, to the effect that our certificate is, in the instances therein specified, "a condition precedent to the validity * * * of any order by the State Commission," is not inharmonious with these views.

FINDINGS

Upon a consideration of all the facts of record we find:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of

Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

3. That the present and future public convenience and necessity require and will require (*a*) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (*b*) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California will take in connection with these

matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record.

HALL, *Commissioner*, dissenting:

I am not prepared to take part in selection of sites and approval or disapproval of plans for railway structures, whether bridge, tunnel, or terminal, all over this broad land. I find nothing in the interstate commerce act which lays upon us any such duty. Certainly no one who participated in framing the provisions of that act as to certificates of public convenience and necessity had union stations in mind. If he had, he was an adept in the use of language to conceal thought.

In these proceedings we have before us an application and a complaint.

The application is by two carriers who seek from us a certificate of public convenience and necessity to the extent that it may be requisite for developing the passenger station of one into the joint station of both, with such extension or construction of line and abandonment of other line as may be appropriate to that end.

The complaint is by Los Angeles, and in effect, by the State commission. They allege no violation by the defendant carriers of any provision of the interstate commerce act. Possibly their complaint should be regarded as an application under paragraphs (18) to (20) of section 1, although I do not think so. Ostensibly it is a complaint under paragraph (21). This distinction at least may be drawn between the application and the complaint, whatever their nature or their sufficiency in other respects; the carriers, as instrumentalities of interstate commerce, seek such authority as we may grant under these paragraphs to enable them to do something. That "something" is to make their transportation facilities and service more nearly adequate for the needs of the public using them.

The complainants come here for such authority as they may need, not to do something, but to require the carriers to do something. That "something" is to construct and maintain a union passenger station, which none of the carriers wants, on a site not of their selection, reached by none of their rails. Neither the city nor any civic body or citizen offers or proposes to contribute anything in land or money to that end. If this complaint be an application under paragraphs (18) to (20), how shall we construe the lack in those paragraphs of even a hint at compulsion? They provide for restraints, or permissions, or both. It is only in paragraph (21) that the power to require appears, and there it is confined to car service, as the term is used in the act, and to extension of carriers' lines.

I am in accord with the construction placed on these paragraphs by the majority report. I merely stress the difference in attitude of the applicants and the complainants before noting my first ground of dissent. This is that the application of the carriers, the only parties before us who propose to do something, is denied.

Plainly they propose a better service than they now afford to the traveling public, a better utilization of property already dedicated to that service. It is their right and their duty to do both without authority from us. But to secure the full benefit of their proposal extension of some main line and abandonment of other main line is necessary. For that they are here. Why should we deny them? We would not if the complainants were not here also. I submit that carriers serving the public with property already devoted to that service should not be restrained from bettering their service because others charged with no such responsibility devise or approve or prefer plans for a substituted service on property which the carriers must go out and acquire at cost in excess of value.

Incidentally the carriers' proposal includes elimination of practically all grade crossings of the Pacific Electric lines in Los Angeles. That feature alone is a contribution to public safety and convenience, if not necessity, which merits and receives the hearty approval of everyone concerned in these proceedings.

My second ground of dissent is the grant, in so far as here made or forecast, of certificates of public convenience and necessity for a union station and for such extension of lines and disuse of other lines as may be incident to its construction and use. There is no magic in unification of passenger terminal facilities. There may be detriment to the traveling public far outweighing the anticipated benefit to Los Angeles, and our concern is, or should be, for the public served rather than for the fruition of civic plans.

Los Angeles is even greater in area than in population. Must those who come and go by rail all pass through one gate or may they

have their choice of several? The record, as reflected in the report, gives no convincing answer to this question. The public convenience, the public necessity, both are to be considered and served if and when our certificates issue in respect of matters within our competency. The union station is not essential to a civic center, as experience has shown. Without entering into details of the Plaza and other plans, it may be noted that the present estimates call for investment of many millions of carrier earnings in property on which no earnings will ever be made, deprive the carriers to that extent of resources now available in time of need, and render useless for carrier purposes the terminal properties in which their investment was long since made on a lower basis of cost.

Any requirement by public authority that carriers invest their capital or earnings in unproductive property beyond what is clearly needed for performance of their public service is a requirement which lessens their ability to properly serve the public. It would seem that the new outlay, by utilization of aerial rights over the station properties or otherwise, could be made to yield compensating return and that the city and the carriers might and should work out in friendly cooperation some satisfactory solution of the problems here presented.

I am authorized to state that COMMISSIONER COX joins in this dissent.

COMMISSIONER WOODLOCK did not participate in the disposition of this case.

## APPENDIX 1.

*Lines of railway of the defendant carriers*

The coast and valley routes of the Southern Pacific Railway connecting Los Angeles with San Francisco and the Sacramento and San Joaquin Valleys, unite at Burbank, about 12 miles north of the Los Angeles station, and extend southerly along the east bank of the Los Angeles River to its juncture with the Arroyo Seco, which drains the territory to the northeast in the vicinity of Pasadena. Here the line crosses to the west bank of the river, and continues southerly along it to the North Broadway Viaduct. Passing under the viaduct the line leaves the river and proceeds southwest along North Spring Street to the northern end of Alameda Street, thence southerly along the latter street to the Arcade passenger station just west of Alameda Street between Fourth and Sixth Streets. The Sunset or El Paso route approaches from the east and crosses the Los Angeles River along Alhambra Avenue and turns south into Alameda Street at North Main Street, a short distance south of the north end of Alameda, and proceeds southerly from thence to the station as do the trains from the north. South of the station the Southern Pacific occupies Alameda Street to the southerly boundary of the city with its line to San Pedro and Santa Ana.

The Southern Pacific has three principal freight yards at Los Angeles. The new classification yard adjoins its main line east of the river and north of the Arroyo Seco, its Midway yard parallels the main line on the west

bank of the river between the Arroyo Seco and the North Broadway Viaduct, and the River station yards are northwesterly of and parallel with the main line along North Spring Street between the North Broadway Viaduct and the north end of Alameda Street. The Southern Pacific coach yards are on Alameda Street near Seventh Street, and its engine terminals on the east bank of the river just south of Alhambra Avenue. Freight from north of Los Angeles destined through for points east moves from the yards southwesterly along North Spring Street to Redondo Street and thence turn easterly into Alhambra Avenue.

The main line of the Atchison, Topeka & Santa Fe from the east through Pasadena follows the Arroyo Seco and crosses to the west bank of the Los Angeles River just north of North Broadway Viaduct. Passing under, it proceeds southerly along the west bank of the river across Alhambra Avenue and Macy and Aliso Streets at grade to its station just south of First Street. For most of the distance south of Alhambra Avenue the passenger line is a little distance from the river. This results in the Santa Fe maintaining two grade crossings at Macy Street and two at Aliso Street. An alternative route from San Bernardino, used principally for eastern freight because of more favorable grades, joins the San Diego line at Fullerton, and enters the city from the southeast. This line crosses the river south of Butte Street and follows north along the west bank of the river to the station. A local line from Redondo and San Pedro joins this line near Butte Street. The principal Santa Fe freight yards lie along the west bank of the river between First and Sixth Streets, but this carrier has a partially developed freight yard east of Los Angeles near Hobart station. Its coach yards lie between Seventh and Ninth Street, and its engine terminals just north of Butte Street, along the west bank of the river.

The main line of the Los Angeles & Salt Lake, herein termed the Salt Lake, enters the city through Hobart from the southeast, and proceeds north up the east bank of the river from Alosta Street to its station at First Street. One local line continues on up the east bank of the river, passes under the North Broadway Viaduct, and follows up the Arroyo Seco to Pasadena. A branch of this line crosses the Arroyo Seco and terminates at Glendale, a suburb about 6 miles north of Los Angeles station. Another local line from the south serves Long Beach and San Pedro and joins the main line between Hobart and the river. The present Salt Lake freight yards lie along the east bank of the river south of First Street to Seventh Street. Its coach yards are south of First Street and its engine terminals just north of Fourth Street. This carrier is constructing new shops, roundhouses, classification yards, and fuel facilities at Hobart Junction, about 3 miles southeast of its present depot and about 4 miles from the Southern Pacific depot. The Salt Lake has a spur which leaves the main line between Hobart and the river and proceeds west across the river and along Butte Street to a connection with the Southern Pacific line at Alameda Street.

## APPENDIX 2

### *Outline of various station plans presented*

*The Sachse plan.*—Under this plan the station would be of the stub-end type, and with its new plaza would occupy [illegible] near the north end of Alameda Street adjoining Main Street on the west, Commercial Street on the south, and San Pedro Street extended on the east. The station building or head house would face south at the north end of Los Angeles Street, and the sta-

tion tracks would extend north to a connection with the Redondo Street wye. Southern Pacific trains from the north would enter the station over the present tracks past the River station freight yard, and those from the east by way of Alhambra Avenue, as at present; Santa Fe and Salt Lake trains from Pasadena would be brought in over the Southern Pacific tracks past River station yard by means of connections near the North Broadway bridge. Salt Lake and Santa Fe trains entering the city from the south would proceed up the west bank of the river and reach the station over the tracks on Alhambra Avenue.

As recommended to the railroad commission by its engineers, the larger plan made provision for the construction of a subway along Main Street for the Pacific Electric from its station at Sixth Street to the station at the Plaza and for some distance beyond to connect with present or prospective rapid transit lines to the east. The Pacific Electric is an extensive interurban system. It crosses many busy streets in Los Angeles at grade. The larger plan also contemplated the use of the River station freight yard for a union coach yard, and for the provision of necessary freight yards in lieu thereof north of the Arroyo Seco. Defendants severely criticised this feature. The same coach-yard arrangement as is contemplated under the Arcade plan would be practicable under either the Sachse station plan or the larger plan. To carry out the comprehensive project would require that some 65 acres of private property be condemned, and 19.5 acres of streets be closed. The improvements on this area are for the most part old, and many are poorly constructed, but some are substantial structures. The city charter, unless amended, would not permit the construction of a subway along Main Street. Due to the scope and completeness of the larger plan, the cost of carrying it out would be considerably greater than the cost of effectuating applicants' proposal. Because of its relation to the comprehensive plan, the cost of a union station under the Sachse plan would also doubtless exceed the minimum amount necessary to erect a union station in the Plaza area defined in the State commission's order. Apparently for this reason and the possibility of confusion with the larger plan, complainants did not, upon the hearing of the consolidated cases or on brief, stress the comparative merits of the Sachse union station plan.

*The Plaza plan.*—The site contemplated under the Plaza plan covers about 38 acres in the southerly portion of the area east of Alameda Street, north of Aliso Street, south of Macy Street, and west of the river. The station would be of the stub-end type. The depot would front on Alameda Street and would face the Plaza. Alameda Street would be relocated a little to the west just in front of the station grounds and the Southern Pacific tracks thereon be permitted to remain. The station tracks would extend easterly to the river to a point near Commercial Street. A double-track viaduct to carry Aliso Street and the Southern Pacific-El Paso line over the river would be constructed somewhat south of Aliso Street as at present. Vehicular traffic and the Pacific Electric would occupy the upper deck. Passenger trains coming down the river from the vicinity of the Arroyo Seco and those coming up the river from the vicinity of Butte Street would follow the west bank to the station turnouts near Aliso Street. Under this plan no provision is made for joint coach-yard facilities. Presumably the carriers would follow the same arrangement as with respect to the Arcade plan.

The station building would be 400 feet long, 120 feet wide, and 60 feet high, with the upper floor substantially on a level with the Plaza, and reached by a bridge over Alameda Street. The lower floor would be level with Alameda Street and accessible for taxicabs and autos. A concourse 400 feet long, 50

wide, and 20 feet high would be reached from both floor levels by means of ramps. It would be 4.5 feet below the level of the upper floor and 8 or 13 feet above the Alameda Street level, depending upon whether impaired or full clearance were allowed under the bridge across Alameda Street. The station tracks at the concourse would be elevated 8 feet above Alameda Street, and would be on a level with the concourse in the case of impaired clearance, or 5 feet below it in the case of full clearance. The bridge across Alameda Street would be supported by steel columns dividing the street into three parts. The middle portion, 30 feet wide from center to center of columns, would provide for the double-track line of the Southern Pacific. The side portions would be 33 feet from center of columns to property line and would each give room for a 22-foot roadway and sidewalk.

The station yard would have 15 tracks ranging in length from 1,000 to 1,300 feet, and would readily admit of expansion. There would be a double-track approach over the Aliso Street bridge and also from the north and south on the west bank of the river. The throat of the yard would have five tracks. At present it is practically a level grade from the river bank to Alameda Street, but the 8-foot fill at the station and the depression of the river-bank tracks in connection with the proposed river viaduct program would result in a grade of approximately 0.5 per cent on the station tracks and compensated grades of 1.24 per cent on the tracks to the Aliso Street bridge, and 0.94 and 1.3 per cent, respectively, on the north-and-south wye tracks connecting the throat of the yard with the tracks on the west bank of the river. If the plan for depressing the river-bank tracks were modified by making the elevation at the Aliso Street bridge about the same as at the throat of the station yard, the compensated grades on the north leg of the wye and the tracks to the bridge would approximate 0.5 per cent and on the south leg of the wye 1.13 per cent. This would increase the grade on the river-bank tracks between the south leg of the wye and First Street from 0.485 to 0.665 per cent. The curvature on the north leg of the wye is 13°, and on the south leg 12° 30'. An interlocking plant would be located adjacent to the Aliso Street bridge near the west-bank tracks.

Under this plan only industrial switching service would remain on Alameda Street. The balance of the Southern Pacific freight traffic would be diverted to the river banks. Abandonment of small portions of Lyon and Vignes Streets near the throat of the station yard would be necessary. Complainant has indicated its willingness to abandon such streets as may be necessary for the construction of any union station in the Plaza area.

*The Arcade plan proposed by applicants.*—The Arcade station site and depot building have been described in the report. Under applicant's plan all eight of the present station tracks save one would be stubbed at Fourth Street, the northern end of the yard, and four additional station tracks added. The tracks would range in capacity from 10 to 20 cars and would have an average capacity of 16 cars. The remaining track across Fourth Street would furnish access to the railway-mail post office, the express yard, a plant of the Los Angeles Ice & Cold Storage Company, and would connect with the Alameda Street tracks at Third Street. As at present, access to trains would be by means of a subway under the station tracks, with ramps to the umbrella sheds and station building. From the south end of such sheds the station tracks would be gathered into the two-track throat near Sixth Street. A spur from the east side of the yard would connect the throat with the Alameda Street tracks. In order to secure a separation of grades, the station yard would be graded up on a 1 per cent grade from the present umbrella

sheds toward the viaduct at the south end of the yard, and Sixth Street and Alameda Street would both be depressed 5 feet.

From the south end of the station yard the viaduct would extend across Sixth Street on a 10° curve and turning eastward would cross Alameda Street a short distance south of its intersection with Sixth Street. From thence it would continue east, south of and parallel to Sixth Street, to the west bank of the river. The grade on the curved viaduct mentioned would be a compensated grade of 1 per cent. The viaducts would be ballasted deck structures on concrete pillars or columns, with 20-foot spans between streets and clear spans over principal street crossings. From the west bank of the river curved bridges would extend to the Salt Lake right of way across the river, one to the north and one to the south. From the north end of the northerly curved bridge the track would descend to grade. Connections would be provided with the Southern Pacific-El Paso line at Alhambra Avenue and with its main line from the north on the east bank of the river north of the Arroyo Seco. The Salt Lake line to Pasadena and Glendale would have access to the station in similar manner. The southerly curved bridge would continue south along the east bank as an elevated structure, pass over Seventh Street and reach grade near Ninth Street. Connection with Alameda Street and the Southern Pacific line from the south would be by means of the Butte Street bridge reached by a curved track on the east bank. Salt Lake trains from the east and south would reach the station over the southerly curved bridge also. Under this plan only night switching of freight for industries would remain on Alameda Street. The track along Alameda Street would be cut near Sixth Street and freight from the River station yard for industries on Alameda Street south of Sixth Street would move east on Alhambra Avenue to the east bank of the river and thence to Alameda Street by way of the Butte Street bridge. The Southern Pacific intends, if the applications are granted, to relocate its coach yards adjacent to its shop grounds on the east bank of the river south of Alhambra Avenue. The Salt Lake will have its coach yards at Hobart.

100 I. C. C.

## ORDER

**At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 6th day of July, A. D. 1925.**

**Finance Docket No. 3569**

**In the matter of the application of the Southern Pacific Company, Southern Pacific Railroad Company, and the Los Angeles & Salt Lake Railroad Company for a certificate of public convenience and necessity**

Investigation of the matters and things involved in the above-entitled proceeding having been had, and the said commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

*It is ordered*, That the application herein be, and it is hereby, denied.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
*Secretary.*

WASHINGTON : GOVERNMENT PRINTING OFFICE : 192

107 EXHIBIT C.

*Decision No.* 18593.

THE MUNICIPAL LEAGUE, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California,

VS.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AND SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 970.

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California,

VS.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 971.

THE CIVIC CENTER ASSOCIATION OF LOS ANGELES, a Corporation of the Citizens of the City of Los Angeles, State of California,

VS.

THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 972.

THE CITY OF PASADENA, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, AND CITY OF LOS ANGELES.

Case No. 974.

THE CITY OF PASADENA, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES, AND SALT LAKE RAILROAD COMPANY, AND CITY OF LOS ANGELES.

Case No. 980.

108 THE CITY OF SAN GABRIEL, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY AND CITY OF LOS ANGELES.

Case No. 981.

THE CITY OF SOUTH PASADENA, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY AND CITY OF LOS ANGELES.

Case No. 983.

In the Matter of the Application of SOUTHERN PACIFIC COMPANY and LOS ANGELES AND SALT LAKE RAILROAD COMPANY for Approval of Agreement for Joint Terminal Facilities in Los Angeles, California.

Application No. 3346. Decided July 8, 1927.

Transportation—Steam Railroad—Station Accommodations—Union Terminal—Trackage Facilities—Abandonment—Extension.—Public convenience and necessity permit the abandonment of all passenger and freight switching on the main line of the Southern Pacific Company on Alameda Street, from College Street to East 15th Street, inclusive, in the city of Los Angeles.

Existing Facilities—Extension of—Not Required.—The extension of new or present facilities as described in the application of Southern Pacific Company and Los Angeles and Salt Lake Railroad Company is not required by public convenience and necessity.

Union Terminal—Public Necessity—Track Rearrangement.—The extension of the main lines of defendant railroads so as to serve a union passenger terminal in that portion of Los Angeles bounded by Commercial, North Main and Redondo Streets, Alhambra Avenue and the Los Angeles River and the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal, is required by public convenience and necessity.

109 Expenses—Ability of Carriers—Not Impaired.—The expenses involved therein will not impair the ability of the railroad companies to perform their respective duties to the public.

Abandonment—Main-line Tracks.—Public convenience and necessity will permit the abandonment by defendants of such portions of their main lines, or the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of its passenger or freight routes, tracks or terminal facilities in connection with the establishment of such union passenger station and terminal.

Main-line Tracks—Joint Use.—The use of so much of the terminal main-line tracks of any of defendants by any other defendant necessary in the proper operation of such union station will be in the public interest.

Cost—Commission's Estimate.—A union passenger station can be constructed by defendants, with incidental track arrangement, according to the Commission's plan, at a cost of approximately $10,000,000.

Union Station—Public Interest.—Such union passenger station would be in the public interest and ought to be constructed.

Commission's Order—Conditional Provision—Interstate Commerce Commission Authorization.—The Commission's order to become effective upon issuance of necessary order or certificate by Interstate Commerce Commission. Commission's attorney directed to file petition with Interstate body for such authorization.

*Hugh Gordon,* for Central Development Association.

*James H. Howard,* City Attorney, and *Roscoe R. Hess,* Deputy City Attorney, for City of Pasadena.

*C. W. Durbrow,* for Southern Pacific Company.

*A. S. Halsted* and *Fred E. Pettit, Jr.,* for Union Pacific and Los Angeles and Salt Lake Railroad Company.

*E. W. Camp,* for The Atchison, Topeka and Santa Fe Railway Company.

*Frank Karr,* for Pacific Electric Railway Company.

*Jess. E. Stephens,* City Attorney, *Milton Bryon,* Deputy City Attorney, and *Max Thelen,* Special Counsel, for City of Los Angeles.

*H. H. Sanborn, A. B. Roehl* and *Spencer Thorpe,* for W. H. Daum, Intervener.

*H. R. Brashear,* for Los Angeles Chamber of Commerce.

*George A. Damon* for Regional Planning Commission and City Planning Association.

*Will D. Gould,* for Northwest Association.

By the Commission:

*Opinion.*

The facts and issues primarily involved in these
110 proceedings, together with the early history thereof, are to be found in our prior Decisions Nos. 8901 and 9838 herein, and require no repetition here.

Action of State Supreme Court.

Subsequent to the rendition of Decision 9838, writs of review were obtained from the California Supreme Court by The Atchison, Topeka and Santa Fe Railway Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, and the Southern Pacific Company, and on December 19, 1922, that court annulled our said Decision No. 9838 upon the ground that, by reason of the enactment by Congress of certain amendments to the Interstate Commerce Act in 1920:

"Full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce * * * has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California * * * has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (*The A., T. & S. F. Ry. Co. vs. Railroad Commission,* 190 Cal, 214; 211 Pac. 460.)

Action of United States Supreme Court.

Affirming this result, but upon narrower grounds, the United States Supreme Court, in proceedings brought before it under writs of certiorari obtained by this Commission, declared, on April 7, 1924, that the only question before it was "whether the power to direct a new union station with its incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920," and held that:

111

"Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

The court further said that such action requires:

"a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission," together with a finding "that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public." (*Railroad Commission vs. Southern Pacific Company,* 264 U. S. 351; 68 L. ed. 713.)

Action of Interstate Commerce Commission

Subsequent to the rendition of the California Supreme Court's decision above mentioned, but prior to that of the United States Supreme Court, the city of Los Angeles filed with the Interstate Commerce Commission a petition asking that these carriers be required to erect a union passenger station in the city of Los Angeles substantially in the manner ordered by this Commission in its Decision No. 9838 (I. C. C. Docket No. 14778). With reference to this action, the United States Supreme Court declared that the course pursued by the city of Los Angeles was correct. This Commission intervened on behalf of the city in said proceeding, and after lengthy hearings, the Interstate Commerce Commission, on July 6, 1925, issued its order.

Upon the rendition of the decision of the United States Supreme Court two other applications were filed with the Interstate Commerce Commission. In the first of these (Finance Docket No. 3556), the Southern Pacific Company and Southern Pacific Railroad Company sought authority to abandon main line train operation over a portion of their railroad along Alameda street in Los Angeles. In the second (Finance Docket No. 3569), these companies
112 and the Los Angeles and Salt Lake Railroad Company together sought from the Interstate Commerce Commission certificates of public convenience and necessity approving a plan for the joint use of the present Southern Pacific passenger station in Los Angeles (sometimes referred to as the "Arcade station") by said companies substantially in the manner requested several years ago by these carriers in Application No. 3346 before this Commission, which application had been dismissed by us in our Decision No. 9838 herein. In its Decision of July 6, 1925, above mentioned, the Interstate Commerce Commission found that public convenience and necessity does not require the construction proposed and described in this connection, and the application of these carriers involving authority to construct extensions looking toward such joint use of the said Southern Pacific station (Finance Docket No. 3569) was denied.

Upon the issue presented by the complaint of the city of Los Angeles, however, the Interstate Commerce Commission declared that the service afforded by the present passenger stations of the Atchison, Topeka and Santa Fe Railway and Los Angeles and Salt Lake Railroad is "unreasonable and inadequate," and that the expenditure of considerable sums of money must at once be made in order to provide reasonable and adequate facilities in lieu thereof; that railroad service, except industrial freight-switching service, be eliminated from Alameda street, and that such action will force the Southern Pacific Company either to provide new means of access to its Arcade station or to abandon the same and provide other facilities, the expenditure of substantial sums of money being required on the part of this carrier in either event. The Interstate body then found that these carriers are in a position to provide reasonable and adequate station facilities, and that "the ex-

pense involved will not impair their ability to per-
113 form their duties to the public." Thus the first requirement of the United States Supreme Court was met.

We shall not here recount in detail the discussion of the Interstate Commerce Commission upon the general subject of a union passenger terminal in Los Angeles. Suffice it to say that that body approved the selection of a site for such a union passenger terminal within a described area near the Plaza in Los Angeles which had been made in our Decision No. 9838 herein, and, upon consideration of the evidence before it, and after a discussion of the advantages of such a solution of this problem, it declared that, in its opinion, a union passenger terminal could be erected upon the said Plaza area in compliance with our former order for a sum aggregating approximately $9,500,000 or at a new money cost of about $5,500,000. A large portion of this particular site is already owned by the Southern Pacific Company. The Interstate Commerce Commission further declared that future extensions or enlargements at the Arcade site would be considerably more expensive, in its opinion, than at the Plaza area, and it added that

"Adequate and convenient union passenger terminal facilities can be provided in the Plaza area at a considerable less net new money cost than less adequate and convenient facilities under applicants' Arcade plan, and for approximately the same net new money cost as a union passenger terminal of more questionable merit on the present Arcade site."

The Interstate Commerce Commission then made the following findings:

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda street from College street to East Fifteenth street, inclusive, in the city of Los Angeles, California.

2. That neither the present nor future public con-
114 venience and necessity require or will require the construction or extension by applicants of new or

existing main lines of railroad in the city of Los Angeles, California, as described in the application in Finance Docket No. 3569.

3. That the present and future public convenience and necessity require and will require (*a*) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, California, so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial street, North Main street, Redondo street, Alhambra avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (*b*) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incident to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

5. That, in addition to the abandonment of service on Alameda street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, California, or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, California, as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants, or any of them, in ac-

cordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the application in Finance Docket No. 3569. We are not advised what
115 action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carriers' ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record."

Thus the Interstate Commerce Commission provided for compliance with the second requirement of the United States Supreme Court.

## Further Proceedings Before this Commission

Subsequent to the rendition of this decision, and upon request of certain of the parties to these proceedings, this Commission reopened the above-entitled matters for further consideration and determination. Hearings were had before the Commission sitting *en banc;* evidence was taken from a large number of interested persons dealing with the subject from every angle, and voluminous briefs have been filed.

In view of our previous findings and order herein, and of the order and decision of the Interstate Commerce Commission relating to this matter, it would appear that in these reopened proceedings the chief question before us is whether, since the rendition of our Decision No. 9838 herein, any facts have developed or any events have occurred of such character as to justify action on our part re-
116 versing the position which we have heretofore taken in this matter.

At the hearings in the reopened proceedings, after making certain technical objections to our jurisdiction to proceed further with these matters—which objections were overruled—the carriers again presented their plan for a solution of the passenger terminal problem in Los Angeles by the use of separate facilities, including the joint use of the Arcade station of the Southern Pacific Company by that Company and the Salt Lake Railroad Company, together with the erection of a new station on the part of the Santa Fe at its present passenger station site. While we have listened to this testimony and have received briefs dealing with the subject, it is our opinion that, in view of the action of the Interstate Commerce Commission in this matter, we could not now—even if we were so disposed—authorize or direct the execution of this plan. The proposal of the carriers, as presented to us in these reopened proceedings, is in all essential respects similar to that formerly presented to us in Application 3346, heretofore dismissed by us, and also to that presented to the Interstate Commerce Commission in Finance Docket No. 3569, which was denied. Except for slight changes in detail, and save for certain other minor changes in the proposed participation of the Pacific Electric Railway Company in the plan, it is the same as hereinbefore dismissed. Although in these reopened proceedings we have given full opportunity for the production of all testimony desired to be offered in support of this plan for separated facilities, nothing, in our opinion, has been added to the record already before us in this connection which would impel us to reverse our former opinion as to this proposal. We will, therefore, again dismiss this application on the part of the carriers.

Since the date of our Decision No. 9838, certain of the dangerous grade crossings along the Los Angeles
117 River have been and are being eliminated by means of the erection of viaducts crossing the river and the railroad tracks lying adjacent thereto and on both sides thereof, under and by virtue of orders issued by this Commission in a proceeding known as Application No. 9671 filed by the city of Los Angeles, county of Los Angeles, Atchison, Topeka and Santa Fe, Los Angeles and Salt Lake and Pacific Electric Railway companies. The Alameda street grade crossings have not as yet been eliminated, nor has the Southern Pacific Company moved to eliminate main line train movements thereover—though conditions at these crossings are admittedly becoming worse day by day—save by again pressing before this Commission and the Interstate Commerce Commission the carriers' plan for separated facilities herein dismissed. Moreover, the Alameda street situation has been somewhat changed and apparently aggravated by the interjection of certain Salt Lake trains using a portion of that street as a means of temporary access to the Arcade station. Some freight movements have been transferred by the Southern Pacific Company from Alameda street to the river bank tracks, but the evidence indicates that the situation along that street as a whole is no less aggravated than it was at the time of our former order herein.

Much evidence was introduced by the carriers in these reopened proceedings dealing with certain proposed participation of the Pacific Electric Railway, an electric street and inteurban carrier and Southern Pacific subsidiary, in the carriers' separated facilities plan. There were also presented a number of proposals for union passenger terminals in the city of Los Angeles differing to a greater or less degree from those hitherto filed herein, and located both within the so-called Plaza site or area, as defined in our Decision No. 9838 herein, and in other locations.
118 Such proposals were presented by W. H. Dunn, who filed a complaint against these carriers (Case No. 2177) praying for an order directing them to erect a union passenger depot at a site on the east bank of the Los Angeles River between Seventh and Ninth streets; by the Municipal League of Los Angeles for a "twin station" with

head houses on each side of the river near Sixth street; by George D. Hall for a union station to face a new Plaza at the junction of Spring street and Sunset boulevard; by the Allied Architects' Association through Charles H. Cheney, for a station with head house fronting on Temple street and Los Angeles street, with tracks extending north from Temple street between Los Angeles and San Pedro streets; by Joseph A. Stark for a station in an area bounded by Los Angeles, San Pedro, First and Market streets, fronting on Los Angeles street; by A. D. Austin for a station in an area bounded by First, Plaza, Main and Los Angeles streets; and, after inquiry upon our part, a plan prepared in the offices of the carriers for a station within the Plaza area considerably greater in extent and different in character from those heretofore presented for a station within that area.

We have carefully considered the testimony adduced in favor of each of these several proposals, together with the briefs filed in support thereof, and while some of these plans appear to possess certain merit, it is our opinion that in the case of none of them has evidence or argument been produced before us sufficient to justify us in reversing our findings and rulings heretofore entered herein and presented to and approved by the Interstate Commerce Commission.

In this connection we should state that further testimony was presented, both by the city of Los Angeles and by certain members of this Commission's staff, upon the question of the availability, accessibility and propriety of the Plaza area, as defined in our Decision No. 9838 herein, and
119 in the Decision of the Interstate Commerce Commission in Docket 14778, for a union passenger terminal station in Los Angeles. Much testimony was also adduced from various sources dealing with the probable cost of such a station. This testimony, in our opinion, fails to support the contention made on many occasions by the carriers that this plan involves the expenditure of "from twenty-five to forty-five millions of dollars." We find no basis in the evidence before us which would make possible such a contention, and we are of the opinion that the findings made by the Interstate Commerce Commission as briefly outlined above, to the effect that an adequate union passenger ter-

minal station, together with the necessary facilities for access thereto, can be constructed within this area for an amount approximately $9,500,000, and at a net new money cost not to exceed approximately $5,500,000, are not subject to serious question. Much of the testimony brought before us in these reopened proceedings concerned a proposal for a union station in the Plaza area presented by George S. Hill of this Commission's staff. (Commission's Exhibit 4-b herein.) This proposal is identical in all essential respects to the plan suggested by Mr. Hill before the Interstate Commerce Commission, that body having had it before it as illustrative of the possibilities of the Plaza area.

In its analysis of probable costs, the Interstate Commerce Commission has set forth its conviction that adequate passenger terminal facilities can be constructed by these carriers in this area, together with all necessary trackage connections and rearrangement for a sum which it declares to be reasonable and proper. We find in the testimony before us no reason to doubt that the findings of probable cost so made by the Interstate Commerce Commission are correct, and we are of the opinion that adequate passenger terminal facilities can be erected upon this site for a cost of
120 approximately $10,000,000 gross, and of approximately $5,500,000 net new money.

The Interstate Commerce Commission has made its findings definitely denying the application of the carriers to put into effect their plan for separated passenger terminal facilities, and it has also found that upon the rendition of a lawful order of this Commission requiring the erection of a union passenger depot within this area, under plans not materially differing from those presented to it, it will issue its certificates in connection with these matters under the requirement of the decision of the United States Supreme Court.

We shall therefore enter herein an appropriate order. The effectiveness of our order herein will be specifically conditioned upon the promulgation by the Interstate Commerce Commission of such further certificates and findings as may be necessary or proper to authorize the construction, extensions and abandonment herein directed, it being our intent and purpose that the further findings and certificates mentioned by the Interstate Commerce Commis-

sion in its Decision in its Docket No. 14778 and its Finance Docket No. 3556 be made prior to this order going into effect. We will direct our Attorney to call this matter to the attention of the Interstate Commerce Commission by proper petition.

*Order.*

Complaints and an application having been filed, as above entitled, said matters having been reopened for further hearing and determination, hearings having been had, testimony having been presented, briefs having been filed, and said matters having been submitted for decision, the Commission having considered said testimony and briefs, and being now fully informed in the premises, and basing its order upon the findings hereinbelow set forth
121 and upon such other findings and statements of fact as are included in the opinion herein:

It is hereby found as a fact;

(1) That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda street from College street to East Fifteenth street, inclusive, in the city of Los Angeles.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the city of Los Angeles, as described in Application No. 3346 and in the record adduced herein.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the city of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said city bounded by Commercial street, North Main street, Redondo street, Alhambra avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment or service on Alameda street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, or of the operation of all or any portion of the present train service thereon, as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said city described in paragraph three (3) above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said city described in paragraph three (3) above is in the public interest and is practicable, without, in our opinion, impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, of a union passenger station within that portion of the city of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

(8) That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14778, to which reference has been made hereinabove.

(9) That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

(10) That said construction ought reasonably to be made.

Wherefore, *It is hereby ordered:*

(1) That the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to construct and thereafter operate a union passenger station within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said Companies as may be reasonably neceessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars, in substantial compliance
124 with the plan outlined in Commission's Exhibit 4-b herein.

(2) Work upon the construction of said union passenger station shall commence within ninety days after the effective date of this order, and shall be completed within three years after said date.

(3) Upon and after the construction of said union passenger station the operation by defendant Southern Pacific

Company of passenger and freight train service, excepting only industrial freight-switching service during hours hereinafter to be prescribed by proper authority, over that portion of its railroad between College street and East Fifteenth street, inclusive, in the city of Los Angeles, shall be abandoned and discontiued.

This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates, or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission. To which end,

*It is hereby further ordered,* that the attorney of this Commission forthwith file with the Interstate Commerce Commission a copy of this order, together with such appropriate petition or application as may be necessary in the premises, requesting and praying that the Interstate Commerce Commission issue such certificates or other appropriate order or orders as may be requisite or proper in order to render this order effective.

The Railroad Commission reserves the right to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require.

*It is hereby further ordered,* that Application No. 3346, as above entitled, be and the same is hereby dismissed.

Dated at San Francisco, California, this eighth day of July, 1927.

126 EXHIBIT D.

Before the Interstate Commerce Commission.

Docket No. 14788.

CITY OF LOS ANGELES, Complainant,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY, PACIFIC Electric Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, Atchison, Topeka & Santa Fe Railway Company, and Union Pacific Railroad Company, Defendants.

Finance Docket No. 3556.

In the Matter of Application of SOUTHERN PACIFIC COMPANY and SOUTHERN PACIFIC RAILROAD COMPANY for a Certificate of public Convenience and Necessity.

*Petition of City of Los Angeles for Issuance of Certificates and Making of Final Order.*

Comes now City of Los Angeles, the complainant in said Docket No. 14,778, and respectfully petitions the Interstate Commerce Commission to grant the relief hereinafter set forth and in support of said petition respectfully shows:

I. In the month of March, 1923, the City of Los Angeles filed with the Interstate Commerce Commission its complaint in said Docket No. 14,778 asking that after due hearing and investigation the Commission make its order or orders commanding the defendant steam railroad
127 carriers, among other matters, to take action as follows:

(1) To construct and thereafter operate and use a union passenger depot and appurtenances on a site located within that portion of the City of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, and to acquire such land, if any as may be necessary for said purpose;

(2) To abandon the operation of the main line tracks of Southern Pacific Railroad Company on Alameda street in the City of Los Angeles from College street to East Fifteenth street, inclusive, for the operation of passenger trains and also freight trains except local freight switching; and

(3) To construct or acquire such structures, facilities, tracks and other property, to make such extensions or abandonments of railroad lines or other facilities or of the operation thereof, and to arrange for such joint or other use of tracks or terminal facilities then constructed or to be constructed, within the City of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the matters specified in the prayer for relief or any portion thereof.

The City also asked this Commission to make such other or further order or orders in furtherance of the relief asked for as the Commission might find to be just and equitable and in the public interest.

The area within which this Commission was thus asked to order the defendant carriers to construct and thereafter use a union passenger depot and appurtenances was the identical area which had theretofore been specified by the Railroad Commission of California in its Decision No. 9838, made on December 6, 1921, in the Los Angeles Union Passenger Depot Cases, copy of which decision is attached as Exhibit No. 3 to the complaint of the city of Los Angeles in said Docket No. 14,778. In said Decision No. 9838, all 5 members of the Railroad Commission of California concurred.

Public hearings in said Docket No. 14,778 were held before Commissioner Clyde B. Aitchison in Los Angeles on July 5, 6, 7, 9, 10 and 11, 1923, and before Examiner Joseph F. Eshelman on June 19, 20 and 21, 1924. The entire
128 record of the Railroad Commission of California in the proceedings which culminated in said decision of December 6, 1921, was made a part of the record of this Commission in said Docket No. 14,778.

On July 6, 1925, this Commission made and filed its decision in said Docket No. 14,778 and in Finance Dockets Nos. 3,556 and 3,569, which had been consolidated with said

Docket No. 14,778 for hearing and decision. (100 I. C. C. 421.)

In its said decision, this Commission, after making a careful and exhaustive review of the record in its bearing on every issue in the proceeding, made the following findings:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda street from College street to East Fifteenth street, inclusive, in the City of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the City of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

(NOTE. This was the so-called Carrier Plan. The application in said Finance Docket No. 3569 was denied by formal order of this Commission.)

3. That the present and future public convenience and necessity require and will require (a) the extension by defendants of their respective lines of steam railroad in the City of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal without that portion of said city bounded by Commercial street, North Main street, Redono street, Alhambra avenue and the Los Angeles River, which they or any of them may construct and establish in accordance with lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the proceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

129 5. That, in addition to the abandonment of service on Alameda street as above authorized, the present

and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carrier of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in acordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

The Commission entered an order denying the application in Finance Docket No. 3569, covering the so-called Carrier Plan.

The Commission further said:

"We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14,778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants."

II. Subsequent to said decision of this Commission, namely, on October 3, 1925, the Railroad Commission of California made and entered its orders instituting further hearings on the subject of the passenger station facilities of the three steam railroads in Los Angeles. Hearings

were thereafter held on said subject on 27 days from November 30, 1925, to August 11, 1926, inclusive. Testimony covering 2,959 additional pages of the record was taken.

The proceedings were finally submitted on briefs on
130 August 11, 1926, at which time the Railroad Commission had before it the testimony of 85 witnesses covering 5,492 pages of the record and also 302 exhibits.

Thereafter, on July 8, 1927, the Railroad Commission of California made and filed its Decision No. 18,593 in said proceedings. This decision was concurred in by all 5 members of the Railroad Commission, 4 of whom became members of the Commission subsequent to the Commission's said Decision No. 9,838 of December 6, 1921. A true copy of said Decision No. 18,593 is attached to this petition, marked "Exhibit A," and made a part hereof. A true copy of Railroad Commission's Exhibit 4(b), which is referred to in the order in said Decision No. 18,593, is attached to this petition, marked "Exhibit B" and made a part hereof.

After making findings of fact identical with the findings made by the Interstate Commerce Commission in its said decision of July 6, 1925, together with a number of additional findings, the Railroad Commission of California made and entered its order as follows:

(1) That the defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to construct and thereafter operate a union passenger station within that portion of the City of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000.00), in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein.

(2) Work upon the construction of said union passenger station shall commence within ninety (90) days after the

effective date of this order, and shall be completed within three (3) years after said date.

131 (3) Upon and after the construction of said union passenger station the operation by defendant Southern Pacific Company of passenger and freight train service, excepting only industrial freight switching service during hours hereinafter to be prescribed by proper authority, over that portion of its railroad between College street and East Fifteenth street, inclusive, in the City of Los Angeles, shall be abandoned and discontinued.

The general area within which said union passenger station is to be constructed, as said area is described in said paragraph (1) of said order, is the identical area which was designated in the Railroad Commission's said decision No. 9,838 of December 6, 1921, and was specified in the Interstate Commerce Commission's said finding of fact in its said decision of July 6, 1925, herein.

The portion of the railroad operated by the Southern Pacific Company, as referred to in said paragraph (3) of said order, is located on and along Alameda street in the City of Los Angeles.

The Railroad Commission's said order of July 8, 1927, further provides as follows:

"This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission."

Said order further dismissed a proceeding known as Application No. 3,346 in which certain of the steam railroad carriers asked the Railroad Commission for authority to

make effective the so-called Carrier Plan for separate passenger terminal facilities. This is substantially the
132 same plan which the Railroad Commission had found to be not in the public interest and dismissed in its said Decision No. 9,838 of December 6, 1921, and as to which the Interstate Commerce Commission made the same finding when it entered its order of July 6, 1925, dismissing said Finance Docket No. 3,569.

III. Subsequent to this Commission's said decision of July 6, 1925, namely, at a special election held on April 30, 1926, the electors of the City of Los Angeles overwhelmingly voted for the affirmative on the question of whether a union railway passenger terminal for all steam railroads should be established in the City of Los Angeles. The railroads at said election vigorously urged the electors to vote for the negative and in support of their position urged upon the electors the so-called Carrier Plan for separate passenger station facilities, which plan the Railroad Commission of California and this Commission had found and declared to be not in the public interest.

At the same election, there was also submitted to the electors the question whether a union railway passenger terminal should be constructed in the general area (frequently referred to as the Plaza area) theretofore designated and described by the Railroad Commission and this Commission in their said respective decisions. The question was so worded that there were pitted against the affirmative not merely such electors as did not favor *any* union railway passenger terminal at all, but also all who favored any of the other numerous suggested locations. Nevertheless, a majority of the electors voted in support of said Plaza area.

IV. Paragraph (3) of section 3 of the Interstate Commerce Act, as amended on February 28, 1920, reads in part as follows:

133 "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers or prop-

erty to and from their several lines and those connecting therewith. * * *"

In *Hastings Commercial Club* v. *Chicago, Milwaukee & St. Paul Ry. Co.*, 69 I. C. C. 489, this Commission, speaking through Commissioner Atchison, said (p. 494):

"The cases are numerous holding that *depots*, platforms, spur or side tracks, station grounds and elevators are parts of railroad *facilities*."

In *St. Louis & S. F. R. Co.* v. *Miller*, 31 Okl. 801, 123 Pac. 1047, the Supreme Court of Oklahoma held (p. 1049):

"The term 'facilities' as used in section 20, Art. 9 of the Constitution (of Oklahoma), includes a railroad depot."

In its said decision of July 6, 1925, herein, this Commission expressly and, we believe, inevitably assumed that the above quoted provision of paragraph (3) of section 3 of the Interstate Commerce Act, as amended,

"makes it the *duty* of carriers to maintain *union-station facilities* in a case where separate facilities would not be reasonable and proper."

Nevertheless, the Commission failed to find in the act any provision conferring upon it specifically the authority to make an affirmative *order requiring* the carriers to perform the *duties* specified in said portion of paragraph (3) of section 3 of the act.

Prior to this Commission's said decision of July 6, 1925, herein, it had been held in three decisions, one by this Commission and two by the courts of last resort of the states of New York and Ohio, respectively, that this Commission has the authority to make an *affirmative order requiring* carriers to observe the *duties* prescribed by said portion
134 of said paragraph (3) of section 3 of the act.

In *Pittsburgh & West Virginia Railway Co.* v. *Lake Erie, Alliance and Wheeling R. R. et al.*, 81 I. C. C. 333, this Commission held (p. 334):

"In our opinion, under that portion of paragraph (3) of section 3 of the act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic be-

tween their respective lines, *we have power* to deal with the issue here presented and *to make an affirmative order* in the premises if warranted by the record."

In *People ex rel. New York Central R. Co. v. Public Service Commission of New York*, 233 N. Y. 113, 119-121, 135 N. E. 195, 22 A. L. R. 1073, the Court of Appeals of New York decided that under the provisions of said portion of paragraph (3) of section 3 of the act, as amended, this commission has the exclusive authority to *require* carriers to construct connecting tracks for the interchange of traffic a portion of which is interstate traffic. On March 13, 1922, the Supreme Court of the United States (258 U. S. 621) denied a petition for a writ of *certiorari*.

In *Lake Erie, A. & W. R. Co.* v. *Public Utilities Commission of Ohio*, 109 Ohio St. 103, 141 N. E. 847, the Supreme Court of Ohio reached the same conclusion on the subject of this Commission's authority to issue orders requiring the performance by carriers of the duties prescribed by said portion of paragraph (3) of section 3 of the Act.

In the *Los Angeles Union Depot* case (264 U. S. 331), it appeared that the Supreme Court of the United States knew that the City of Los Angeles had filed its complaint with this Commission in said Docket No. 14,778 herein and that in said complaint the City had asked for an *affirmative order requiring* the defendant steam railroad carriers to construct and operate a union passenger depot in the City of Los Angeles. In the next to the last paragraph of its decision, the Supreme Court said:

135 "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an *order* to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this court, the matter is held under consideration."

Understanding clearly the nature of the relief which the City of Los Angeles had asked from this Commission, the Supreme Court continued:

"For the reasons given *we think the course taken by the City of Los Angeles was the correct one.*"

Subsequent to this Commission's said decision of July 6, 1925, herein, it has been held in two decisions, one by this Commission and one by the Supreme Court of the United States, that this Commission has the authority to make an affirmative order requiring carriers to perform the duties prescribed by said portion of said paragraph (3) of section 3 of the Act.

In *Chamber of Commerce, Breckenridge, Texas* v. *Wichita Falls, Ranger & Fort Worth R. Co.*, 109 I. C. C. 81, decided on March 4, 1926, the complaint was for the establishment of connections between tracks of two defendant railroads. At page 82, this Commission said:

"The Ranger line and the Eastland, Wichita Falls & Gulf challenge our jurisdiction to grant the relief prayed for. *Under that portion of paragraph (3) of section 3 of the act* which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, *we have the power to make an affirmative order* if warranted by the record. *Pittsburgh & West Virginia Ry. Co.* v. *L. E. A. & W. R. R.*, 81 I. C. C. 333."

In *Alabama & Vicksburg Railway Company* v. *Jackson & Eastern Railway Company*, 271 U. S. 244, decided on May 24, 1926, the Supreme Court of the United States said:

136 "In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in Par. 22, Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under Par. 3 of Sec. 3 to *require* the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co.* v. *Lake Erie, A. & W. R. Co.*, 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in *Chamber of Commerce* v. *Wichita Falls, R. & Ft. W. R. Co.*, 109 I. C. C. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co.* v. *Public Service Commission*, 233 N. Y. 113, 119-121, 22 A. L. R. 1073, 135 N. E. 195. Com-

pare *Lake Erie, A. & W. R. Co.* v. *Public Utilities Commission,* 109 Ohio St. 103, 141 N. E. 847."

Your petitioner very respectfully submits that under the provisions of said portion of paragraph (3) of section 3 of the Interstate Commerce Act, as amended, and under said decisions, this Commission has full and complete power and authority to make said affirmative order requested by the City of Los Angeles in the prayer of its complaint herein. In its prayer in the present petition, the City will ask, very respectfully and earnestly, that said relief be now granted.

V. Subsequent to this Commission's said decision of July 6, 1925, herein, the defendant carriers made public announcement to the Railroad Commission of California during the course of one of the hearings before that Commission, that they would conduct legal warfare unto the next generation, if necessary, against any order of any public authority requiring them to carry out any passenger terminal plan in Los Angeles other than their own so-called Carriers' Plan.

Subsequent to the making of the Railroad Commission's said decision of July 8, 1927, namely, on July 9, 1927,
137 the defendant carriers made public announcement through the press of the City of Los Angeles that they will now again go to court on the ground that the Railroad Commission of California did not have the jurisdiction to render its said decision of July 8, 1927.

In view of said attitude of the defendant carriers, your petitioner deems it proper to submit to the Commission certain considerations on the subject of future litigation.

A period of approximately 2 years and 4 months intervened between the Railroad Commission's said Decision No. 9,838 of December 6, 1921, and the decision of the Supreme Court of the United States on said order, rendered on April 7, 1924.

If the Supreme Court of the United States should hereinafter decide, on review of the Railroad Commission's said decision of July 8, 1927, that this Commission has the sole and exclusive authority to make an affirmative order requiring the defendant steam railroads to construct and operate a union passenger terminal in the City of Los

Angeles, as prayed for by the City in the complaint in said Docket No. 14,778 herein, then, unless in the meantime this Commission has made such order, it would be necessary for the City of Los Angeles, after a further delay of at least two years, to come before this Commission again and ask for such order. The defendant carriers could then seek to prosecute another appeal to the Supreme Court of the United States, on other grounds, which appeal, if permitted, would presumably take another two years, or thereabouts.

As already stated, your petitioner is fully convinced that this Commission has full power and authority to make the affirmative order prayed for. If the Commission should still entertain doubts on the question of law involved, your petitioner nevertheless very earnestly prays that the Commission, in the interest of securing a final decision by the Supreme Court of the United States without any further delay than is necessary under the circumstances,
138 now make the order prayed for by the City of Los Angeles. If the defendant carriers decide to litigate that order, the Railroad Commission's said order and this Commission's order could be reviewed by the Supreme Court of the United States at one and the same time and all questions of law and fact decided by that tribunal in one further, final decision.

VI. This Commission now has before it in these proceedings a remarkably complete and thorough record, consisting not merely of the testimony taken by it but also of the entire record on which the Railroad Commission of California rendered its said Decision No. 9,838 of December 6, 1921.

In its said decision of July 6, 1925, this Commission has already decided every material issue of fact in favor of the City of Los Angeles and has, in effect, decided that on the *merits* the City is entitled to the relief for which it asks.

Before taking further action, the Commission desired only to be advised as to what further action the Railroad Commission of California would take. The California Commission has now acted and this Commission is being advised as to the action taken.

This Commission is now in a position to act under the jurisdiction which it expressly retained for the purpose of

"making such further *findings* and *orders* and issuing such *certificates* as the record warrants."

The petitioner very respectfully asks that without the introduction of further testimony and without any further proceedings unless an oral argument on the existing record be deemed desirable, the Commission now issue the certificates and make the order hereinafter specified.

139 Wherefore, the City of Los Angeles respectfully prays that the Interstate Commerce Commission now take action as follows:

1. Issue its certificates in accordance with its findings Nos. 1 to 6, inclusive, heretofore made herein and appearing in 100 I. C. C. 459-460.

2. Make its order directing the defendants Southern Pacific Company, The Atchison, Topeka & Sana Fe Railway Company and Los Angeles and Salt Lake Railroad Company, and each of them, to construct and thereafter operate a union passenger station and appurtenances within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, together with such tracks, connections and all other terminal facilities, and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, and to acquire such land, if any, as may be necessary for said purpose, at a total cost of approximately ten million dollars ($10,000,000.00) in substantial compliance with the plan outlined in "Exhibit B" attached to this petition.

3. Make such additional findings and orders, issue such further certificates and grant such other and further relief in furtherance of the relief herein asked for as the Com-

mission may find to be just and equitable and in the public interest.

Dated at Los Angeles, California, this 25th day of July, 1927.

CITY OF LOS ANGELES,
By JESS E. STEPHENS,
*City Attorney,*
By MILTON BRYAN,
*Deputy City Attorney,*
*Byrne Building, Los Angeles, California.*

MAX THELEN,
*Special Counsel,*
*Balfour Building,*
*San Francisco, California.*

(Here follows diagram marked page 140.)

141 EXHIBIT E.

Interstate Commerce Commission.

Los Angeles Passenger Terminal Cases.

No. 14778[1].

CITY OF LOS ANGELES

v.

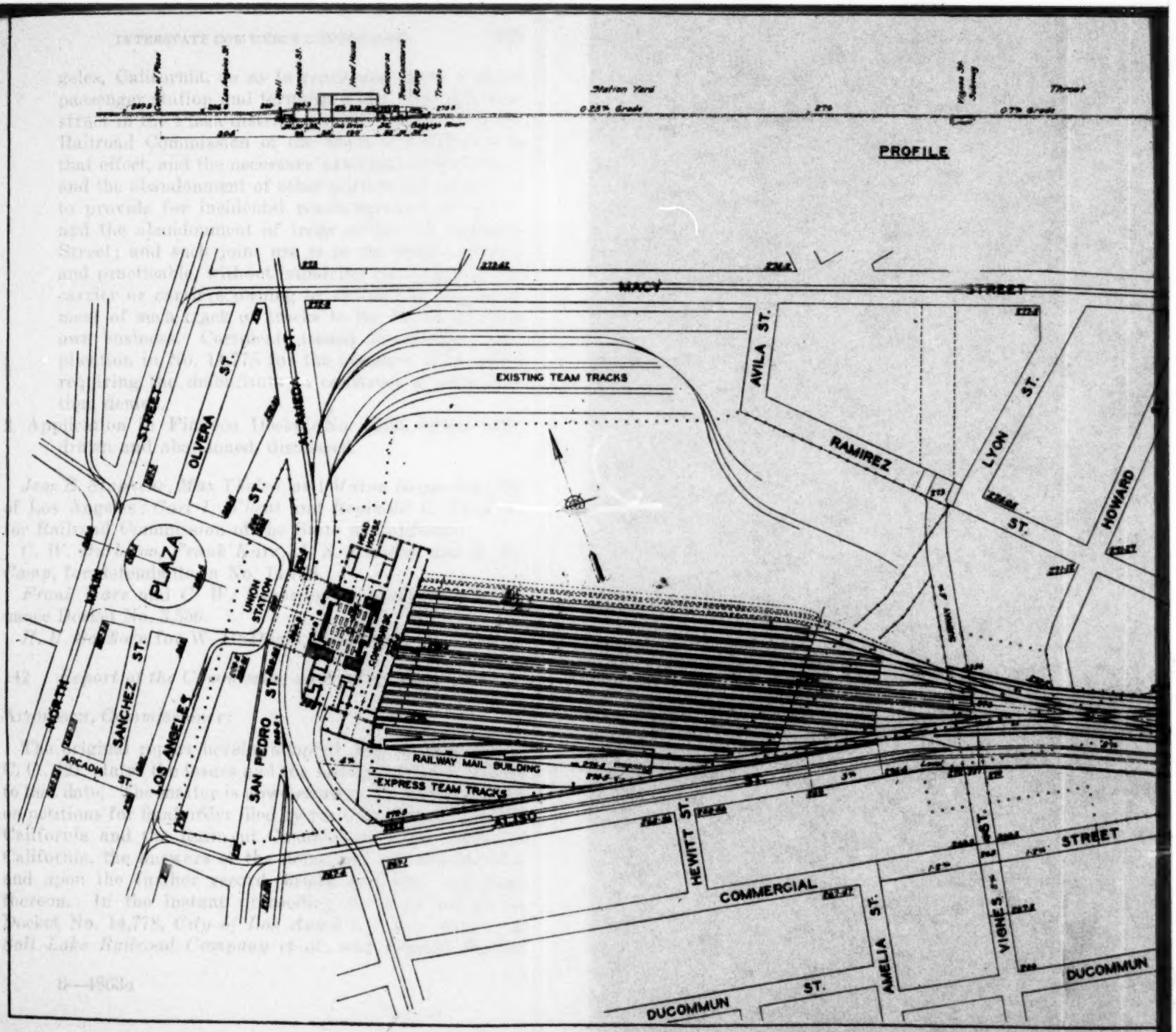
LOS ANGELES & SALT LAKE RAILROAD COMPANY et al.

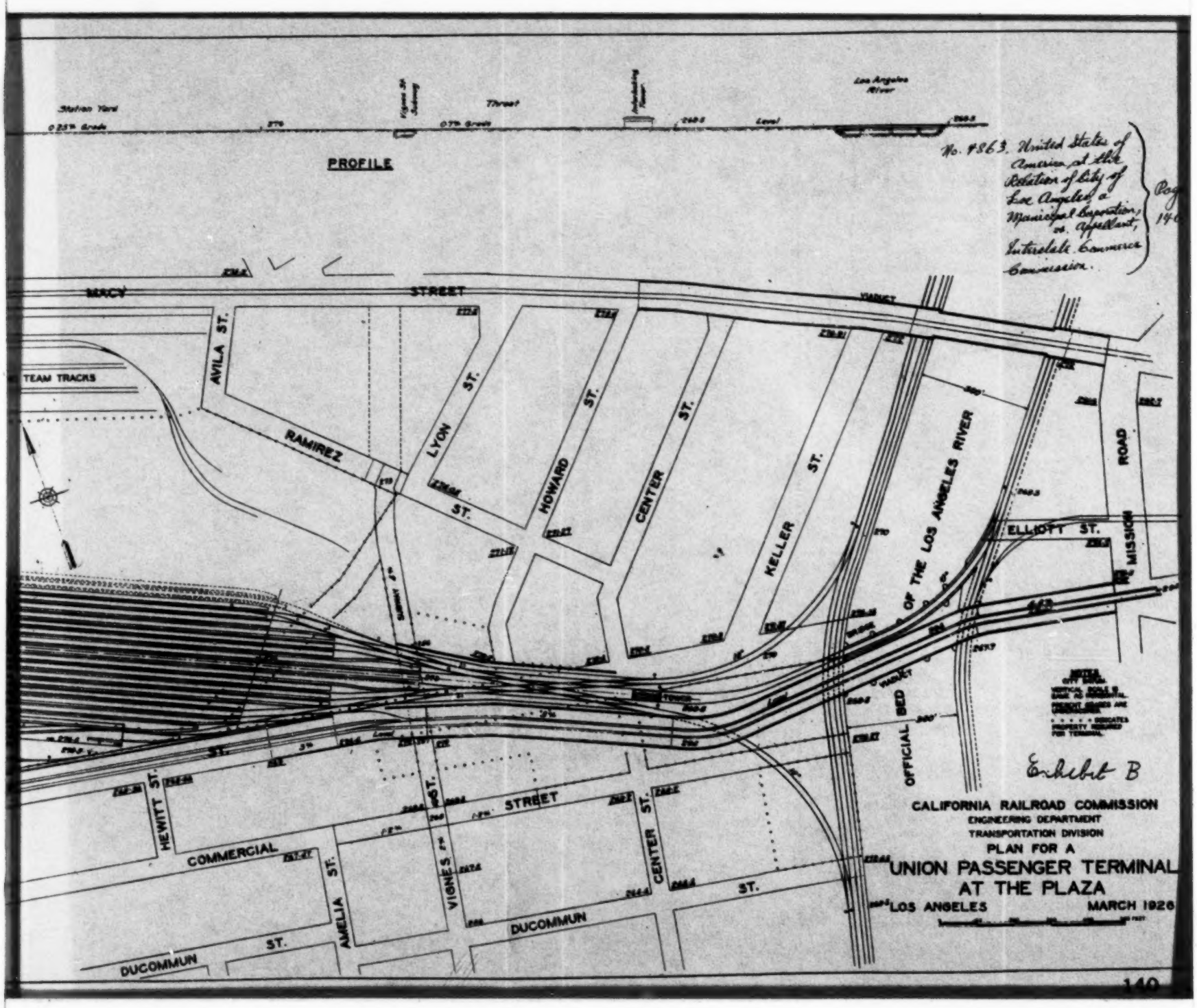
Submitted November 17, 1927. Decided May 8, 1928.

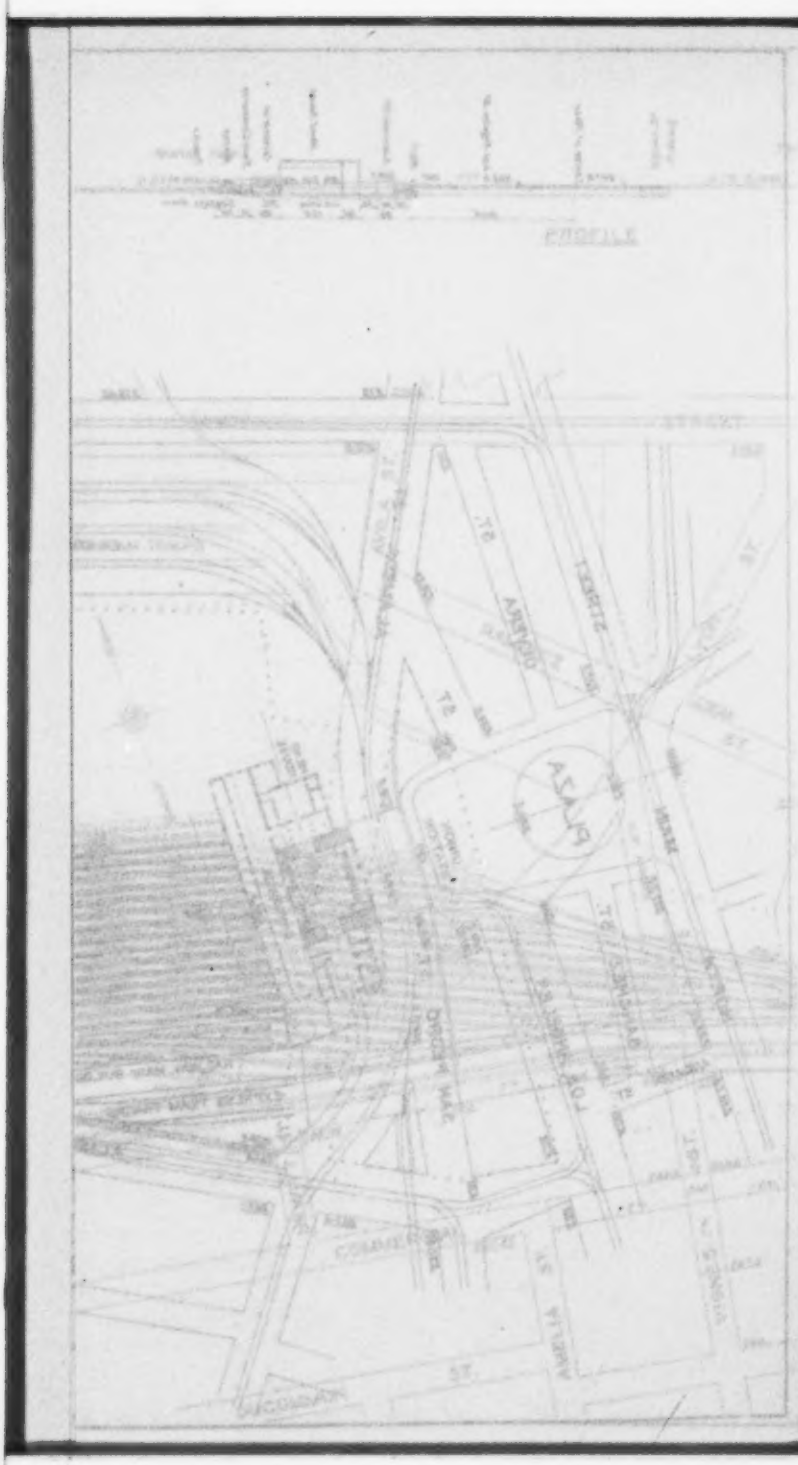
Upon Further Hearing of the Principal Complaint and of the Application in Finance Docket No. 3556.

1. Conclusions of the original report, 100 I. C. C. 421, adhered to as to public convenience and necessity requiring the extension by defendants of their respective main lines of railroad in the City of Los An-

[1]This report also embraces Finance Docket No. 3556, in the Matter of the Application of Southern Pacific Company and Southern Pacific Railroad Company for Certificate of Public Convenience and Necessity.


PROFILE
Station Yard
0.25% Grade
Throat
0.7% Grade
MACY STREET
EXISTING TEAM TRACKS
AVILA ST.
RAMIREZ
LYON ST.
HOWARD ST.
ALAMEDA ST.
OLIVERA ST.
STREET
PLAZA
MAIN
UNION STATION
HEAD HOUSE
CONCOURSE
NORTH
SANCHEZ ST.
ARCADIA ST.
LOS ANGELES
SAN PEDRO ST.
RAILWAY MAIL BUILDING
EXPRESS TEAM TRACKS
ALISO
HEWITT ST.
COMMERCIAL
AMELIA ST.
VIGNES ST.
DUCOMMUN ST.
DUCOMMUN


PROFILE
No. 9863. United States of America at the Relation of City of Los Angeles a Municipal Corporation, vs. Appellant, Interstate Commerce Commission.
Page 140
MACY STREET
AVILA ST.
TEAM TRACKS
RAMIREZ
LYON ST.
HOWARD ST.
CENTER ST.
KELLER ST.
OF THE LOS ANGELES RIVER
ELLIOTT ST.
MISSION ROAD
OFFICIAL BED
HEWITT ST.
COMMERCIAL
AMELIA ST.
VIGNES ST.
DUCOMMUN ST.
Exhibit B
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
TRANSPORTATION DIVISION
PLAN FOR A
UNION PASSENGER TERMINAL
AT THE PLAZA
LOS ANGELES
MARCH 1926



geles, California, so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to order of the Railroad Commission of the State of California to that effect, and the necessary extension of main lines and the abandonment of other portions of main lines to provide for incidental rearrangement of routes, and the abandonment of train service on Alameda Street; and such joint use is in the public interest and practicable, without impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business. Certificate issued accordingly. Application in No. 14,778 for the issuance of an order requiring the defendants to construct a union station, denied.

2. Application in Finance Docket No. 3556, being withdrawn and abandoned, dismissed.

*Jess E. Stephens, Max Thelen,* and *Milton Bryan* for City of Los Angeles; *Carl I. Wheat* and *Reginald L. Vaughan* for Railroad Commission of the State of California.

*C. W. Durbrow, Frank Karr, A. S. Halsted,* and *E. W. Camp,* for defendants in No. 14,778.

*Frank Karr* and *C. W. Durbrow* for applicants in Finance Docket No. 3,556.

*H. H. Sanborn* for W. H. Daum, intervener.

142 *Report of the Commission on Further Hearing.*

AITCHISON, *Commissioner:*

The original report herein, adopted July 6, 1925, 100 I. C. C., 421, states the issues and the history of the litigation to that date. The matter is now before us, as will be shown, on petitions for final order filed by the City of Los Angeles, California and the Railroad Commission of the State of California, the answers of the defendant carriers thereto, and upon the further record, briefs, and oral argument thereon. In the instant proceeding we have before us Docket No. 14,778, *City of Los Angeles* v. *Los Angeles & Salt Lake Railroad Company et al.,* and Finance Docket

No. 3,556, *In Re Application of Southern Pacific Company et al.* for a certificate of public convenience and necessity. As will be shown, Finance Docket No. 3,556 is before us upon the dismissal of the same by the applicants therein.

The issues presented by the complaint in No. 14,778 were thus stated in the original report, 100 I. C. C. at page 422:

The City of Los Angeles is a municipal corporation of the State of California and complainant in No. 14,778. Defendants are railroads engaged in interstate transportation of passengers and freight, and enter Los Angeles. The city asks that the commission direct defendants (1) to construct, operate, and use a union passenger depot within a defined area in that city, and to acquire land necessary therefor; (2) to abandon main-line passenger and freight service, except local freight switching, on and along a portion of Alameda Street in Los Angeles; (3) to eliminate and abandon certain railroad grade crossings in the city; and (4) to construct or acquire such structures, tracks, and facilities, to construct or abandon such lines or facilities of operation, and to arrange for such joint or other use of existing tracks, or tracks to be constructed within the City of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the foregoing. The only relief sought against defendant Pacific Electric Railway is the participation by it in the expense of constructing a viaduct at Aliso Street in Los Angeles to eliminate grade crossings on both banks of the Los Angeles River.

Finance Docket No. 3556, an application by Southern Pacific Company and its lessor, Southern Pacific Railroad Company, asked for a certificate of public convenience and necessity authorizing the abandonment of 0.15 miles of main-line track, and the abandonment of operation of passenger and freight train service (except freight switching service) on 6.6 miles of main line track on Alameda Street, in Los Angeles.

The Railroad Commission of the State of California appeared in support of the complaint, as intervener. Other interventions have been made for or against the com-
143 plaint.

The somewhat involved history of the proceedings is set forth on pages 423 to 425 inclusive of our orig-

inal report, and need not be restated *in extenso*. Briefly, the controversy originated in a complaint filed with the Railroad Commission of the State of California, which resulted in an order by that Commission for the elimination of certain specified railroad grade crossings along the Los Angeles River, and for the erection of a union passenger station at some site within a defined area in the vicinity of what is known as the Plaza in the City of Los Angeles, and upon the completion thereof for the railroads involved to remove all passenger and freight traffic except local-freight switching from a designated portion of Alameda Street. The Southern Pacific and the Los Angeles & Salt Lake presented to the California Commission their own plan for a joint station between those lines, known as the Arcade plan, which application after hearing was dismissed by the state Railroad Commission. The city of Los Angeles had previously taken no definite stand, but thereafter accepted the decision of the State Commission as determinative. Following a rehearing and certain modifications of the conclusions of the State Commission, which required the carriers to proceed to procure sufficient grounds for a union passenger station within a defined area, and to prepare and submit plans for a union station, and upon approval of the plans by the State Commission, to proceed with the construction of such station and terminal, and for the elimination of specified grade crossings, the State Commission's order was taken into the state courts of California. In *Atchison, T. & S. F. Ry. Co.* v. *Railroad Commission*, 190 Cal. 214, the order was held to be invalid, and the conclusion was sustained upon certiorari by the Supreme Court, *R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331. Pending the review by the Supreme Court the complaint in No. 14778 was filed with us and heard, but it was not submitted until the Supreme Court had decided the case. After the Supreme Court's decision, the application in Finance Docket No. 3556 was filed, (with other applications not necessary here to be considered) and consolidated with No. 14778. The evidence previously received in the latter case was made available in the finance proceedings

also. There was further hearing upon the consolidated cases, in June, 1924, followed by our report of July 6, 1925. For convenient reference the findings made by us are reproduced in the margin.[1]

Subsequent to our decision, the Railroad Commis-
144 sion of the State of California reopened the matters pending before it for further consideration and determination. A voluminous record was made. The testimony of many interested parties, including citizens and experts others than representatives of the city of Los Angeles and of the carriers, was taken. The parties before the State Commission are the defendants in No. 14778 before us.

By decision entered July 8, 1927, made part of the record herein, the California Commission exhaustively reviewed the general situation. The findings of fact made are
145 stated in Appendix 1. The state Commission thereupon ordered that the defendants, Southern Pacific

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[1] The findings, 100 I. C. C. 459, 461, are as follows:

Upon a consideration of all the facts of record we find:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

3. That the preesent and future public convenience and necessity require and will require (a) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif. so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by de-

Company, Atchison, Topeka & Santa Fe Railway Company, and Los Angeles & Salt Lake Railroad Company, and each of them proceed to construct and thereafter operate a union passenger station within that portion of the city of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, (being the general locality previously referred to in our report and the record as the Plaza District) together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements, and changes in the existing railroad facilities of the defendants as might be reasonably necessary and incidental to the use of such union passenger station, at a cost of approximately $10,000,000, in substantial compliance with the plan outlined in the State Commission's exhibit known as Exhibit B-4.[2] It further ordered that work upon the construction of such union station should commence within 90 days after the effective date of its order, and be completed within three years after said date. Provision is made that upon

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fendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California, will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record.

[2] The plan submitted by the California Commission in the original hearing before us is essentially the same as that known as Exhibit B-4.

and after the construction of such union passenger station the operation by the Southern Pacific Company of passenger and freight train service, excepting only industrial freight—switching service during the hours hereafter to be prescribed by proper authority, over that portion of its railroad (upon Alameda Street) between College Street and East Fifteenth Street, inclusive, in the city of Los Angeles, shall be abandoned and discontinued.

The order in express terms recites:

"This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions, and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or of the order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission;"

146 The State Commission therefore further ordered that its attorney forthwith file with us a copy of such order, together with appropriate petition or application requesting us to issue such certificates or other appropriate order or orders as may be requisite or proper in order to render the order of the State Commission effective.[3] The State Commission dismissed the application made by Southern Pacific Company and Los Angeles & Salt Lake Railroad Company for the approval of the construction of joint terminal facilities in Los Angeles, upon the lines of the Arcade plan proposed by those carriers to the State Commission as a substitute for the Plaza plan, so-called.

The California State Commission has filed with us its petition for final order. The prayer is that we issue such certificate or certificates and make and promulgate such

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[3] The State Commission made reservations of the right to make such further order or orders relating to construction, operation, modification, and abandonment of facilities and other matters as might be determined by it to be just and reasonable and as the public safety, convenience, and necessity may require.

further order or orders as may be proper or requisite in the premises to render effective the order of the California Commission, and for other appropriate relief. The petition of the city of Los Angeles for the issuance of certificates and the making of final order is somewhat more extensive than the petition of the California State Commission, but the relief sought is the same. It asks that we now issue the certificates and make the order specified in its petition, namely:

(1) Issue certificates in accordance with findings 1 to 6 in our report, 100 I. C. C. 459, 460.

(2) Order the defendants to construct and thereafter operate a union passenger station and appurtenances within the Plaza site * * * at a cost of approximately $10,000,000, in substantial compliance with the plan, Exhibit B attached to the petition; and

(3) Make such additional findings and orders, issue such further certificates, etc., as may be just and equitable and in the public interest.

The answers of the defendants to the petition of the California Commission are similar. They assert

(1) The unconstitutionality of the California statute and the procedure of the state commission thereunder.

(2) Deny that this Commission had fixed and adopted any area.

(3) Allege that the plan of the California Commission's order is not practicable, will be unreasonably expensive, will unreasonably interfere with other railroad operation, particularly freight, and will not be in the interest of the public.

The defendants raise the constitutional issues as to the power of this Commission under the interstate commerce act.

147 The answers to the petition of the city of Los Angeles are similar, with this qualification: They deny that our record is complete, and allege that subsequent to the rendition of decision by this Commission, nearly 3,000 pages of testimony and numerous and elaborate exhibits were introduced in the reopened proceedings before the Railroad Commission of California relating to matters which have not heretofore been submitted to or considered

by us, which, it is alleged, show conclusively that it is not practicable to construct or operate a union passenger station in accordance with the plans and specifications referred to in the order of the California Railroad Commission.

Defendants therefore allege that it is essential that we give consideration to such evidence before rendering a decision and order herein.

The proceedings were set down by us for further hearing. Upon the further hearing, the record made and introduced before the Railroad Commission of the State of California, duly certified by it, was, by stipulation of all the parties, incorporated in the record herein, subject to the objections made during the course of the proceedings, and subject to the right of all parties to brief and argue the case as was made before us. This course, it may be observed, resulted in very considerable savings both of time and expense to the parties and the Government.

Finance Docket No. 3569 was heard and determined by us with the principal case, upon our former report. In it the Southern Pacific Company and the Los Angeles & Salt Lake sought authority to construct certain main new lines, and to extend their existing main lines so as to permit joint use and operation by them of the existing passenger station of the Southern Pacific, known as the Arcade site, hereinbefore referred to, and so as to permit the removal of Southern Pacific passenger and freight trains, except industrial switching, from Alameda Street. As appears by our former report, this application we denied. The Southern Pacific and the Los Angeles & Salt Lake allege that the application in Finance Docket No. 3556 was filed in conjunction with and as complementary to Finance Docket No. 3569, but that the latter application having been denied, it becomes necessary to continue to operate service as heretofore, and therefore the applicants do not desire to abandon the lines or service described in the application in Finance Docket No. 3556, and therefore dismiss, abandon, and withdraw the application. At the present stage of these proceedings before us, the Arcade plan is therefore not within the issues. The only plan before us, it is agreed by the parties, is the Plaza plan, prepared by the Railroad Commission of California, and accepted and sup-

ported by the City of Los Angeles through its designated municipal offices, also known in the record as Exhibit 4-B before the California Commission.

It will be observed that our findings of fact in the original report, previously set out, are in effect duplicated by findings numbered 1 to 6 of the Railroad Commission of the State of California in its decision of July 8, 1927, as appears in Appendix No. 1 hereto. The State Commission in addition found (7) that the present and future public convenience and necessity require and will require the construction by defendants and each of them of a union
148 passenger station within that portion of Los Angeles described in the third finding, with the track and other facilities reasonably necessary, convenient, or incidental to the use of such passenger station; (8) that in its opinion an adequate union passenger station could be constructed within the described portion of the city at a cost of approximately $10,000,000, in substantial compliance with the plan outlined in its exhibit No. 4-B, which is found to be in all essential respects similar to the plan considered by us in our original decision and report; (9) that such plan for a union passenger station in the Plaza portion of Los Angeles in the opinion of the State Commission, is and would be in the public interest, and that its construction is practicable, without impairing the ability of the defendants to perform their respective duties to the public; and (10) that such construction ought reasonably to be made.

The matter before us presents questions of fact and of law.

The record before us is voluminous. It embraces the original and further hearings before us, and record made before the California commission after our original report. At the original hearing, by appropriate reference large portions of the record made in the original hearings together with voluminous exhibits before the State Commission were incorporated.

It would be easy to prolong this report into almost interminable length by undertaking detailed and meticulous examination of the facts disclosed of record. But they have been repeatedly subjected to scrutiny—first by the State Commission upon its original hearing and upon its rehearing, secondly in the original proceeding before us, and

thirdly in the reopened proceedings before the State Commission. It seems, therefore, sufficient merely to state our general conclusions with respect to the sufficiency of the facts previously found by us, and those as found by the California Commission in its additional findings, previously set forth, and supported by the record. All of the testimony of record in the original proceedings before us was examined and given careful analysis in our original report. We adhere to the conclusions there expressed, upon a further consideration of the whole record, including the subsequently imported testimony taken before the California Commission. In our judgment, the findings of the California Commission numbered 7 to 10 inclusive, as appears in the appendix and as above summarized, find sufficient support in the record. We may therefore turn to the questions of law involved.

Coming first to those raised by the defendants: (1) Questions as to the constitutionality of the California statute and the procedure of the State Commission thereunder, certainly are not within our administrative purview at this state of the proceedings. (2) The objections made to the constitutionality of provisions of the Transportation Act 1920, under which we are vested with authority in certain instances to order the construction or extension of new lines and facilities of railroad carriers, need not now be discussed by us, in view of our determination upon the application by the complainant and the California State Commission for a mandatory order requiring such construction.

149 (3) Complainants have again raised the question whether we have power to require the defendants to construct and operate a union passenger station upon the site heretofore specified in our findings. Their contention that we have such power was pressed with vigor upon the original submission before us. The complainants point to section 3, paragraph (3) and (4) of the interstate commerce act as furnishing the necessary statutory authority. As stated in the original report, at page 430, we concluded that we are not empowered to *require* the construction of a union passenger station as sought in No. 14778, under the issues framed in the complaint therein. In addition to the authorities previously brought to our attention, the complainant cites *Breckenridge Chamber of*

*Commerce* v. *W. F., R. & F. W. R. R. Co.*, 109 I. C. C. 81, in which, by Division 5, it was stated that under that portion of paragraph (3) of section 3 of the act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, we have the power to deal with an issue as to the establishment of a switch connection between the tracks of railroads, and to make an affirmative order if wararnted by the record. *Pittsburgh and West Virginia Ry. Co.* v. *L. E., A. & W. R. R.*, 81 I. C. C. 333, was there cited as authority. In *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244, 250, the Supreme Court said:

"In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in paragraph (22), Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under paragraph (3) of Sec. 3 to require the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co.* v. *Lake Erie, A. & W. R. Co.*, 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in *Chamber of Commerce* v. *Wichita Falls, R. & Ft. W. R. Co.*, 109 I. C. C. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co.* v. *Public Service Commission*, 233 N. Y. 113, 119-121. Compare *Lake Erie, A. & W. R. Co.* v. *Public Utilities Commission*, 109 Ohio St. 103."

The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case, is obvious. Re-examination of the whole subject again leads us to the conclusion that under existing law we are not empowered to require the construction of a union passenger station of the character sought by the complaint; but that we are authorized to find (1) whether the present or future public convenience and necessity permits of the proposed abandonment of line, (2) whether the proposed extensions of line are reasonably re-

quired in the interest of public convenience and necessity, and whether the expenses involved therein will impair the ability of defendants to perform tehir duties to the public, and (3) whether such joint use of existing terminal facilities by other than the owning carriers, as would be necessary if a new union passenger station were established in the Plaza area, is in the public interest and practicable, without substantially impairing the ability of the
150 owning carrier to handle its own business. These are the conclusions which we reached upon the original presentation.

All issues of fact having been considered and concluded by our original report and this report on further hearing, nothing remains for us but to deny the application of the city of Los Angeles and the intervener, the Railroad Commission of the State of California, for a final order herein requiring the construction of a station as found in the public interest; but in lieu thereof issue an appropriate certificate of public convenience and necessity conformable to the findings herein; and to dismiss the application in Finance Docket No. 3556. An appropriate certificate and order will be entered.

EASTMAN, *Commissioner*, concurring in part:

I am in accord with what is done in this case, except that I believe that we should enter the order which complainants seek requiring defendants to construct and operate the union station. From the standpoint of public policy I am inclined to the view that the power over such matters should rest with the States, subject to a limited supervision on our part under paragraph (18) of section 1. But it is by no means certain in that such is the law, and there are cogent reasons which, as I see it, justify us in entering the desired order.

The history of the case is significant. Complainants at first sought and obtained an order from the California commission. This was resisted by defendants, upon the ground that Congress had exclusively occupied the field and that the power to order rested with us. This view of the matter was accepted by the Supreme Court of California. Upon appeal the Supreme Court of the United States in *R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331, stated the question before the court as follows:

Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920.

It cannot be said that this question was clearly answered. The concluding paragraphs of the opinion were as follows:

We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

The judgment of the Supreme Court of California is affirmed.

151 It will be noted that the court held that the City of Los Angeles, in asking us for an *order* to provide, maintain, and use a union station, took a correct course; and that it also affirmed the judgment of the California court, which had plainly held that "full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission." However, the language immediately preceding this affirmation, with respect to action by us under paragraphs (18) to (21) of section 1 of the interstate commerce act, does lend itself to the interpretation which the majority place upon our powers, and there is other language in the opinion which is susceptible of such an interpretation.

The defendants have shifted their position. In their brief before the Supreme Court they said that

the sole and exclusive power to enter orders such as were entered by the California commission has been vested in the Interstate Commerce Commission by the amendments made to the Interstate Commerce Act in 1920.

Their position now is that Congress has indeed occupied the field in paragraph (3) of section 3, but that neither the State nor the Nation has power to enter an order requiring the construction of the station, and that our only power is to grant such certificates of convenience and necessity as may be required where a carrier is voluntarily proposing new station construction.

Whether or not we have the power to enter an order is not free from doubt, but I believe that from paragraph (21) of section 1 and paragraphs (3) and (4) of section 3 such power may be derived. Possibly no one of these paragraphs fully covers the ground, but they so supplement each other than when taken together their individual deficiencies disappear.

Paragraph (21) authorizes us to require a carrier "to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this act, and to extend its line or liners." The term "car service" is confined in the Act to service in the transportation of property, and therefore limits to the extent our authority to require a carrier to provide itself with "safe and adequate facilities." There is no similar limitation, however, upon our authority to require a carrier "to extend its line or lines." Under this paragraph, therefore, we clearly may require in the instant case such new track construction as is involved in the union station project. But this leaves the station building unprovided for.

Paragraph (3) of section 3 makes it the duty of carriers, among other things, to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines." It is this provision, as stated above, upon which defendants rely in contending that Congress has exclusively occupied the field in question. In our previous decision we assumed, without deciding, that this provision

"makes it the duty of carriers to maintain union-station facilities in a case where separate facilities would
152 not be reasonable and proper," and I think that this assumption was correct. Apparently it is conceded by the carriers. However, our conclusion was that we have no authority to enter an order to enforce this duty. This conclusion was largely predicated upon *United States* v. *Pennsylvania R. R. Co.* 242 U. S. 208, a case which arose before the transportation act, 1920, and decided that we could not require defendant to provide and furnish oil tank cars. There we had chiefly relied upon our power under section 15 to prescribe just and reasonable "practices," and the court held that this word was too obscure to justify an order requiring a special type of tank cars to be provided. But the act, as it then existed, did make it the duty of carriers to furnish "such transportation" including by reference "cars and other vehicles and all instrumentalities of shipment or carriage," upon reasonable request therefor, and the court intimated that the jurisdiction to enforce this duty was in the courts and not in this Commission. By analogy this supports the position of the majority here, although it seems that the meaning of the word "practices" was the dominant feature of the case, and there is here no reliance upon section 15 or upon that word.

However, since our previous decision in this case, we have ourselves decided in *Pittsburgh & West Virginia Ry. Co.* v. *L. E. A. & W. R. R.*, 81 I. C. C. 333, and in *Chamber of Commerce, Breckenridge, Texas* v. *W. F., R. & F. W. R. Co.*, 109 I. C. C. 81, that we have the power to enforce by affirmative order the provisions of paragraph (3) of section 3, and the Supreme Court has referred with approval to these cases in *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244. They related to the establishment of switch connections, and the majority here distinguish them by saying that the "distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case is obvious." The logic of this is not clear. In our previous decision we held, upon authority of the Supreme Court decision in the tank-car case, that power to enforce

paragraph (3) of section 3 is in the courts rather than in us. It now appears that so far, at least, as that paragraph requires switch connections, we can enforce it. But if we can enforce it in one of its aspects why not in all? There is nothing in the paragraph which distinguishes between little duties and big duties, or gives us power to enforce the one and not the other. Inasmuch as the Supreme Court has intimated that we can enforce paragraph (3) in one respect it follows necessarily, it seems to me, that we can enforce it in all respects.

Paragraph (4) of section 3 empowers us, if we find it to be practicable and in the public interest, to require the use of the terminal facilities of one carrier by another. Of this paragraph the Supreme Court said in *R. R. Comm.* v. *Southern Pac. Co., supra,*

It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.

153 As I see it, the questions here with respect to this paragraph are: (1) Whether the authority can be exercised when no carrier is seeking such exercise, i e., whether we can require a carrier against its will to condemn a part of the property of another; and (2) whether the power can be exercised to compel the use of property not in any carrier's possession? As for the first question, there is nothing in the language of the paragraph, or of the Supreme Court above quoted, to indicate that the authority of this paragraph can be invoked only upon petition of some carrier, or that there must be at least one willing carrier. As for the second question, it was mentioned by the Supreme Court in the above-cited case. The court remarked that it was urged that

the supervisory power thus conferred does not include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers, not theretofore used for terminals,

and it went on to say:

This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions.

This comment, it seems to me, certainly does not suggest that we have no power over the "larger and more important union stations." Moreover, complainants now point out that it has developed in the meantime that at least two-thirds of the property needed for the new station is already in the possession of the carriers, and that the expropriation of only a limited amount of private property will be necessary to round out the situation.

My conclusion is that, considering the various statutory provisions together, we probably have power to enter the desired order. But this is not the only reason for such action. Certainly a conclusion that we have no power to enter an order is at least subject to much doubt. Certainly, also, the carriers propose to litigate this case as long and as vigorously as they can. The least possible delay in determining legal questions and arriving at an end of litigation will result, I believe, if we, as well as the State commission, enter an order. This aspect of the matter was strongly and persuasively presented by complainants. In view of the manifest uncertainty as to what the law is, it is a course which we are quite justified in following and the one which is most likely to result in a needed clarification of the law.

I am authorized to state that Commissioners Lewis and McManamy join in this expression.

154 BRAINERD, *Commissioner*, dissenting:

In this case certificates of public necessity and convenience are proposed to be issued upon complaint by the City of Los Angeles and others, not upon the application of any carrier, and in fact over the objection and protest of all the defendant carriers. Paragraphs (18) to (21) of section 1, it seems to me, relate to rights sought to be exercised

by the carriers. That they deal primarily with such rights is certain. *C. C. C. & St. L.* v. *U. S.*, 72 L. Ed., 166, 168. For this reason, and for the further reason that our action fails, it seems to me, to give due consideration to the necessity for the economical management of existing transportation facilities, I dissent from the report herein.

*Certificate and Order.*

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th Day of May, A. D. 1928.

Los Angeles Passenger Terminal Cases.
No. 14778.

Abandonment of Line by Southern Pacific Co. and Southern Pacific R. R. Co.

Finance Docket No. 3556.

A further hearing and investigation of the matters and things involved in these proceedings having been had, and the commission having, on the date hereof, made and filed a report on further hearing containing its findings of fact and conclusions thereon, and having on July 6, 1925, filed its original report herein, 100 I. C. C., 421, which said reports are hereby referred to and made a part hereof:

*It is hereby certified,* That the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company of extensions of their respective main lines of railroad in the city of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandon-
155 ment of operation of all passenger and freight train service, except industrial freight-switching service,

on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal.

*It is ordered,* That the applications in No. 14778, in so far as they seek an order requiring the construction of a union passenger station and terminal in Los Angeles, Calif., be, and it is hereby, denied.

*And it is further ordered,* That the joint application of the Southern Pacific Company and the Southern Pacific Railroad Company in Finance Docket No. 3556 be, and it is hereby dismissed.

By the commission.

[SEAL.] GEORGE B. McGINTY,
*Secretary.*

156 APPENDIX No. 1.

The findings of fact by the Railroad Commission of the State of California are as follows:

(1) That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the City of Los Angeles, as described in Application No. 3346 and in the record adduced herein.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the City of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Re-

dondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, or of the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said city described in paragraph three (3) above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said city described in paragraph three (3) above, is in the public interest and is practicable, without in our opinion, impairing the ability of the carrier or carriers owning
157 or entitled to the enjoyment of such track or tracks to handle its or their own business.

(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and the Los Angeles

and Salt Lake Railroad Company, and each of them of a union passenger station within that portion of the City of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

(8) That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-*b* herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14,778, to which reference has been made hereinabove.

(9) That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

(10) That said construction ought reasonably to be made.

158 In the Supreme Court of the District of Columbia.

At Law.

No. 15688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

*Rule to Show Cause.*

Filed Jul. 12, 1928.

Upon consideration of the Petition of City of Los Angeles, a municipal corporation, filed herein on the 12th day

of July, 1928, it is by the Court, this 12th day of July, 1928,

Ordered, that the respondent, Interstate Commerce Commission, be and it is hereby directed to show cause on or before the 6th day of August, 1928, why a Writ of Mandamus should not issue, as prayed in the Petition; provided, that a copy of the Petition and of this Rule be served upon the respondent on or before the 13th day of July, 1928.

JENNINGS BAILEY,
*Justice.*

(Endorsed:) Service of copy of Petition & Rule accepted in behalf of Respt. this 12th day of July, 1928. Edward M. Reidy.

159 In the Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

v.

INTERSTATE COMMERCE COMMISSION, Respondent.

*Answer of Interstate Commerce Commission.*

Filed Aug. 4, 1928.

The Interstate Commerce Commission, hereinafter called the Commission, respondent in the above-entitled proceeding, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficient in the relator's petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I. Answering sub-divisions numbered I to IV of said petition, inclusive, the Commission admits that the allegations therein contained are true.

II. Answering sub-division numbered V of said petition, the Commission admits that the allegations therein
160 contained are true, except that it disclaims information sufficient to form a belief as to the truth of the allegation "that said carriers had made frequent public admission of the necessity, in the public interest, of eliminating all railroad operations along said Alameda Street, except only industrial switching for freight.

III. Answering the first paragraph of sub-division numbered VI of said petition, the Commission admits the allegations contained therein are true.

Answering the second paragraph of said sub-division numbered VI, the Commission admits that the Santa Fe's passenger station in Los Angeles is a small brick building erected in 1893, and located along the west bank of the Los Angeles River south of First Street; that it does not meet the reasonable requirements of the travelling public in respect of the adequacy and convenience of facilities furnished or accessability of location; that a large proportion of the travelling public having occasion to use said station can do so only by crossing Alameda Street and the tracks of the Southern Pacific located thereon; and that the erection of a suitable station, if provided by the Santa Fe independently, would cost that carrier a large amount of money. Except as so admitted, the Commission disclaims information sufficient to form a belief as to the truth of the allegations contained in said paragraph.

Answering the third paragraph of said sub-division numbered VI, the Commission admits that the allegations therein contained are true except that it disclaims information sufficient to form a belief as to the truth of the allegation that the only plan that would eliminate from Alameda Street all passenger operations and all freight oper-
161 ations except freight switching consistently with public convenience, necessity and safety, is to change the location of the Southern Pacific's depot from the present Arcade site to a site in the vicinity of the Plaza.

IV. Answering sub-divisions VI to XXII, inclusive, of said petition, the Commission admits and alleges that on April 26, 1921, the Railroad Commission of California, in a proceeding before it, ordered certain carriers, termed in said petition the Southern Pacific, the Santa Fe and the

Salt Lake, to file plans for the erection of a union passenger station within a defined area in the vicinity of what is known as the Plaza in the City of Los Angeles, Calif.; that on December 6, 1921, following a rehearing on petition of the carriers, it ordered said carriers to secure sufficient land within said Plaza area for a union passenger station and terminal, to submit plans therefor and, upon their approval by said Commission, to proceed with the construction thereof; that thereafter said carriers by writs of review took said state commission's decision and order to the Supreme Court of California wherein, in *A. T. & S. F. Ry.* v. *Railroad Comm. of Calif.*, 190 Cal. 214, said court held in substance that the Transportation Act of 1920 had vested full authority over the matter of union terminal depot facilities of interstate carriers by railroad in the Interstate Commerce Commission, divesting the state commission of the jurisdiction sought to be exercised by it; that upon petition of said state commission the Supreme Court of the United States granted writs of certiorari in respect of said state court decisions, and meanwhile the City of Los Angeles filed its complaint with this Commission in Docket No. 14,778, *City of Los Angeles, complainant,* v. *L. A. & S. L. R. Co. et al., defendant,* wherein,
162 in substance it asked the Commission to require the defendant carriers to construct and operate a union passenger station and appurtenances within the Plaza area in the City of Los Angeles and to acquire the land necessary for said purpose, to abandon passenger and freight train operation except local freight switching on Alameda Street between College Street and East Fifteenth Street, to construct new track and other property, to make extensions and abandonments of lines and to arrange for such joint or other use of tracks or terminal facilities now existing or to be constructed, as may be necessary or incidental in furtherance of the relief prayed for; that on April 7, 1924, the Supreme Court of the United States rendered its decision in *Railroad Comm. of Calif.* v. *Southern Pac.* Co., 264 U. S. 331, the above-mentioned certiorari proceeding, wherein said court, in affirming the judgment of the state court, held in substance that said carriers could not be required to provide a new interstate union station and extend their main tracks thereto as ordered by the State Rail-

road Commission until the Interstate Commerce Commission shall have acted under paragraphs (18) to (20) and (22) of Section 1 of the Interstate Commerce Act; that following said last-mentioned decision, and after full hearing, this Commission issued its report in said proceeding instituted by the City of Los Angeles, 100 I. C. C. 421, wherein, while holding that it was not empowered to require the construction of a union passenger station as sought by the City of Los Angeles, it, nevertheless, made the findings of fact set forth in sub-division XII of the petition and which were, generally speaking, that public convenience and necessity permitted the abandonments of train service asked for by the City on Alameda Street, and required of said carriers such extensions and abandonments of lines and service and joint use of terminal tracks as would be nec-
163 essary or proper in connection with the establishment and operation of any union passenger station and terminal within said Plaza area which they, or any of them, may construct in accordance with a lawful order of said state commission and in connection with the rearrangement of routes incidental thereto, and that said extension would not impair said carrier's ability to perform their duties to the public; that this Commission at that time issued no certificates but stated, in effect, that it retained jurisdiction and reserved the right to alter its findings in the event that the plan for a station finally evolved by the carriers or the state commission was materially different from that "as here considered to be in the public interest"; that thereafter said state commission reopened its proceeding and, after further hearing, rendered its decision wherein it made findings of fact substantially identical with the findings that had been made by this Commission and, in addition, made the findings set forth in sub-division XIII of the petition which were, generally speaking, that public convenience and necessity required of said carriers the construction of a union passenger station within said Plaza area and other terminal facilities incidental thereto, which, in its opinion, could be done at a cost of $10,000,000 in substantial compliance with a plan prescribed by it, shown as part of Exhibit C of the petition herein, and separately marked C. R. C. Ex 4-B; that thereupon said state commission made its order requiring of said carriers the per-

formance of acts which would carry out the purport of its said findings, but said order was to become effective only after promulgation by this Commission of an order authorizing the construction, extensions and abandonments so authorized and directed by said state commission; that thereafter the City of Los Angeles filed with this Commission,
164 in said Docket 14,778, the petition, copy whereof is attached to the petition herein, marked Exhibit D, wherein, generally speaking, it asked this Commission to issue certificates in accordance with the findings theretofore made by it and above described and, in addition, to order said carriers to construct and thereafter operate a union passenger station and appurtenances within the Plaza site at a cost of approximately $10,000,000, in substantial compliance with the above-mentioned plan of said state commission; that said state commission filed in said proceeding a substantially similar petition and thereupon said carriers filed answers and appeared in opposition to the relief sought by said City and State Commission; that subsequently, after further hearing and submission of evidence, this Commission on May 8, 1928, rendered its report and order, copy whereof is attached to the petition herein, marked Exhibit E, wherein it affirmed the findings made in its earlier report and further found that the above-mentioned additional findings made by said State Commission find sufficient support in the record, and whereby it issued certificates in conformity with all said findings. The Commission, however, in its said final report and order, adhered to the conclusions expressed in its earlier report that it was not empowered to require the construction of a union passenger station as sought by the City of Los Angeles, and said State Commission, and denied their application in this particular.

Further answering sub-divisions numbered IX, XI, XII and XV, the Commission admits that the excerpts therein given from court decisions and from the reports of this Commission are correctly quoted, but respectfully refers the Court to the decisions and reports from which they are excerpted for full and complete information in the premises.

The Commission further alleges that in making the aforesaid reports and orders it considered and weighed carefully

in the light of its own knowledge and experience,
165 every fact, circumstance, condition, and provision of law, called to its attention on behalf of the parties to said proceeding, by their respective counsel, including all matters covered by the pertinent allegations of the petition herein.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in its said report of July 6, 1925, and its said report and order of May 8, 1928, which are hereby referred to and made a part of this answer.

V. The Commission, further answering the allegations of the petition, asserts and alleges that:

1. On its face the petition shows that this case was instituted in court by the relator to obtain a writ of mandamus commanding the Commission to require three certain carriers, named in the petition, to construct and use a union passenger station in the City of Los Angeles, California, if the Commission is of the opinion that such a station should be so constructed and used but pertinent provisions of law as construed by the Supreme Court of the United States, show that the Commission does not possess jurisdiction which would enable it to make such a requirement.

2. On its face the petition shows that the Commission has assumed and exercised all the jurisdiction which it is empowered to assume and exercise over the matters referred to and covered by said petition.

3. The petition does not show that the Commission has been guilty of any act or omission, which act if done, or which omission if made, would entitle the relator to
166 the relief, or any of the relief, asked for by it in and by said petition.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct and hereby prays that the rule to show cause issued herein be discharged and that the petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
*Chief Counsel.*

CITY OF WASHINGTON,
*District of Columbia, ss:*

Clyde B. Atchison, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

CLYDE B. ATCHISON.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 3rd day of August, 1928.

[SEAL.] EUGENIA W. SUTER,
*Notary Public.*

In the Supreme Court of the District of Columbia.

167 At Law

No. 75688.

UNITED STATES OF AMERICA, at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

*Demurrer of Relator to Answer of Respondent.*

Filed Aug. 10, 1928.

Now comes the City of Los Angeles, the relator, and demurs to the answer of the Interstate Commerce Commission, the respondent, on file herein, and to each subdivision thereof, on the ground that said answer and each subdivision thereof are bad in substance and do not state facts sufficient to constitute a defense to the petition of the relator on file in the above entitled proceeding.

The matters of law which the relator intends to argue are that said Interstate Commerce Commission has the power, authority and jurisdiction to consider the evidence

in Docket No. 14,778 before said Commission and referred to in the relator's petition on file herein, for the purpose of determining whether said Commission should issue the order as prayed for by the relator requriing the construction and use of a union passenger station and appurtenances in the City of Los Angeles, State of California, as described in said petition, and thereafter to make an appropriate order based on said evidence, and that this
168 Court should grant its order for the issuance of a peremptory writ of mandamus commanding and directing said Interstate Commerce Commission to consider the evidence in said Docket No. 14,778, referred to in the relator's said petition, for the purpose of determining whether said Commission should issue said order requiring the construction and use of said union passenger station.

Dated at the City of Washington, District of Columbia, this 10th day of August, 1928.

JESS E. STEPHENS,
*City Attorney, City of Los Angeles,*
*City Hall, Los Angeles.*

MAX THELAN,
*Special Counsel for Relator,*
*Balfour Building,*
351 *California Street,*
*San Francisco, California.*

EDWIN C. BLANCHARD,
*Associate Counsel for Relator,*
404 *Southern Building,*
*Washington, D. C.*

169 Thursday, October 18, 1928

Session resumed pursuant to adjournment, Hon. William Hitz, Justice, presiding.

* * * * * * *

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

At Law

No. 75,688.

Come now the parties hereto by their respective attorneys of record, and thereupon this cause heretofore submitted to the Court upon the petition and the exhibits thereto, the answer of the rspondent to said petition and the demurrer of the relator to said answor having been considered, it is ordered that said demurrer be and the same is hereby overruled.

Thereupon the petitioner by its attorneys elects to stand upon its petition. Wherefore, it is considered that the petition herein be, and the same is hereby dismissed, that petitioner take nothing by this suit, that respondent go hence without day and recover of petitioner its costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment the petitioner, by its said attorneys, in open court, notes an appeal to the Court of Appeals; whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars with the clerk in lieu thereof.

WILLIAM HITZ, *J.*

170 *Memorandum.*

October 18, 1928—$50 deposited by Plaintiff in lieu of bond on appeal.

*Assignments of Error.*

Filed Oct. 18, 1928.

In the Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

City of Los Angeles, a municipal corporation, the Petitioner and Relator herein, makes the following assignments of error, which it avers occurred upon the trial of this cause, to-wit:

1. That the Court erred in overruling the demurrer of the Relator to the answer of the Respondent on file herein.

2. That the Court erred in holding and deciding that the petition did not contain statements or allegations of fact sufficient to constitute a cause of action against the Respondent or to entitle the Relator to the relief prayed for in its petition or to any relief in the premises.

3. That the Court erred in entering an order dismissing the Relator's petition for a writ of mandamus.

4. That the Court erred in rendering judgment
171 the Relator upon the overruling of the Relator's demurrer to the Respondent's answer on file herein.

5. That the Court erred in rendering judgment against the Relator, whereas the judgment ought to have been rendered in favor of the Relator and against the Respondent.

6. That the Court erred in holding and deciding that the Interstate Commerce Commission does not have jurisdiction to make the order requested by the City of Los Angeles in its complaint in Docket No. 14778 before the Interstate Commerce Commission.

7. That the Court erred in holding and deciding that the Interstate Commerce Commission does not have jurisdic-

tion under Paragraph 3 of Section 3 and/or under Paragraph 4 of Section 3 and/or under Paragraphs 18 and 20, inclusive, of Section 1 and/or under the other provisions of the Interstate Commerce Act, as amended, to make the order requiring the defendant carriers in said Docket No. 14778 to construct, maintain and operate a union passenger station in the City of Los Angeles, as prayed for by the City of Los Angeles in its complaint in said Docket No. 14778 before said Interstate Commerce Commission.

Wherefore the Relator, City of Los Angeles, a municipal corporation, prays that the judgment of the Supreme Court of the District of Columbia may be reversed.

JESS E. STEPHENS,
*City Attorney, City of Los Angeles,*
*City Hall, Los Angeles.*

MAX THELEN,
*Special Counsel for Relator,*
*Balfour Building,*
351 *California Street,*
*San Francisco, California.*

172 EDWIN C. BLANCHARD,
*Associate Counsel for Relator,*
404 *Southern Building,*
*Washington, D. C.*

*Designation of Record.*

Filed Oct. 18, 1928.

In the Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

VS.

INTERSTATE COMMERCE COMMISSION, Respondent.

Thee Clerk will please include in the record on appeal the following:

1. Petition for writ of mandamus, with Exhibits A to E, inclusive, thereto attached.

2. Rule to show cause.
3. Answer of respondent to above petition.
4. Demurrer of relator to said answer of respondent.
5. Order overruling said demurrer and judgment for respondent.
6. Certificate showing entry of appeal and the date thereof.
7. Assignments of error.
173 8. This designation of record.

JESS E. STEPHENS,
*City Attorney, City of Los Angeles,*
*City Hall, Los Angeles.*

MAX THELEN,
*Special Counsel for Relator,*
*Balfour Building,*
351 *California Street,*
*San Francisco, California.*

EDWIN C. BLANCHARD,
*Associate Counsel for Relator,*
404 *Southern Building,*
*Washington, D. C.*

Service of within designation of record admitted this — day of October, 1928.

DANIEL W. KNOWLTON,
*Chief Counsel Interstate Commerce Commission.*

174 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 173, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 75688 at Law, wherein United States of America, at the relation of City of Los Angeles,

a municipal corporation is Relator and Interstate Commerce Commission is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 25th day of October, 1928.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
*Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 4863. United States of America at the relation of City of Los Angeles, a municipal corporation, appellant, vs. Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Oct. 27, 1928. Henry W. Hodges, Clerk.

(4053)

163 Tuesday, January 8th, A. D. 1929

UNITED STATES OF AMERICA AT THE RELATION OF CITY OF LOS ANGELES, a Municipal Corporation, appellant
*vs.*
INTERSTATE COMMERCE COMMISSION
No. 4863

On motion, the appellant is allowed to file a reply to the brief of the appellee and also to the brief as amicus curiæ filed herein.

The argument in the above entitled cause was commenced by Mr. Max Thelen, attorney for the appellant, and was continued by Mr. Daniel W. Knowlton, attorney for the appellee, and was concluded by Mr. Max Thelen, attorney for the appellant.

164 In the Court of Appeals of the District of Columbia

UNITED STATES OF AMERICA AT THE RELATION OF CITY OF LOS ANGELES, a Municipal Corporation, appellant
*vs.*
INTERSTATE COMMERCE COMMISSION
No. 4863.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Before MARTIN, *Chief Justice;* ROBB and VAN ORSDEL, *Associate Justices*

Mr. Justice Van Orsdel delivered the opinion of the court:

VAN ORSDEL, Associate Justice. The city of Los Angeles, California, a municipal corporation, filed a petition for mandamus in the Supreme Court of the District of Columbia to compel defendant, the Interstate Commerce Commission, to make an order requiring the Southern Pacific, the Atchison, Topeka & Santa Fe, and the Los Angeles & Salt Lake Railroad Companies to construct, maintain, and operate, a union passenger station in the city of Los Angeles, at a point near what is known as the Plaza.

It appears that in 1921 the Railroad Commission of California, in a proceeding before it, ordered the carriers named to file plans for the erection of a union station at the point above designated in the city of Los Angeles, and in a subsequent order required
165 the carriers to secure sufficient land for the construction of the station and terminal, to submit plans therefor and, upon approval by the commission, to proceed with the construction. The carriers appealed from the decision to the Supreme Court of California. (190 Cal. 214.) The court reversed the order on the ground that the transportation act of 1920 (41 Stat. 456), had vested full authority over union depot facilities of interstate carriers by railroads in the Interstate Commerce Commission, divesting the State commission of jurisdiction in the premises. From this decision the State commission carried the case to the Supreme Court of the United States.

While the case was there pending, the city of Los Angeles filed a complaint with the Interstate Commerce Commission praying the commission to require the defendant carriers to construct and operate the union passenger station in question. During the pendency of this case before the commission, the Supreme Court rendered its opinion in Railroad Com. of Cal. *vs.* Southern Pac. Co. (264 U. S. 331), hereafter for convenience referred to as the "Los Angeles Case," in which the judgment of the Supreme Court of California was affirmed, the court holding in substance, however, that defendant carriers could not be required to provide a union station and extend their terminal tracks until the Interstate Commerce Commission had acted under paragraphs 18 to 21 of section 402 of the transportation act.

166 The commission then issued its report in the proceeding instituted by the city of Los Angeles (100 I. C. C. 421), holding that it was powerless "to require carriers to construct union passenger stations under conditions such as are here present." It, however, made findings in accordance with its interpretation of the decision of the Supreme Court to the effect that public convenience and necessity required such extensions and abandonments of lines and service and joint use of terminal tracks as would be necessary in the establishment and operation of a union passenger station at the point designated; and that the expense would not impair the ability of the roads to perform their respective duties to the public. The commission, however, refused to issue certificates as provided in the transportation act, but retained jurisdiction of the case reserving the right to alter its findings in event that the plan evolved by the carriers or the State commission for the establishment of a union station might be materially different from that "here considered to be in the public interest".

The State commission reopened the case and on further hearing rendered a decision, with findings, substantially identical with those made by the Interstate Commerce Commission, and in addition found that public convenience and necessity required the defendant
167 carriers to construct a union passenger station at the point designated, with the terminal facilities incidental thereto, which in its opinion could be done at a cost of $10,000,000. The State commission thereupon made an order requiring defendant carriers to carry out its findings when the Interstate Commerce Commission should promulgate an order authorizing the construction, extensions, and abandonments, as directed by the State commission.

The city of Los Angeles and the State commission thereupon filed with the Interstate Commerce Commission petitions asking the commission to issue certificates in accordance with the findings theretofore made by it; and to order said carriers to construct and thereafter operate the union passenger station in compliance with the plan announced by the State commission. The carriers filed answers opposing the relief sought. Evidence was taken, and the Interstate

Commerce Commission, on May 8, 1928, rendered its report and order affirming the findings made in its earlier report with the finding that the report of the State commission is sufficiently supported in the record, and it accordingly issued certificates in conformity with said findings. (Los Angeles Passenger Terminal Case, 142 I. C. C. 489.) The commission, however, adhered to the decision reached in the earlier case to the effect that it was not empowered to require
168 the construction of a union passenger station and denied the application in this particular.

It was this decision which brought about the present suit, and from the decision of the court below dismissing the petition, this appeal is prosecuted.

We think the Interstate Commerce Commission was in error in holding that it is without power under the transportation act to require the carriers in question to construct a union station. The purpose in the mind of Congress in vesting the commission the extensive control over interstate railways, set forth in the transportation act, is expressed in Dayton-Goose Creek Railway Company *vs.* United States (263 U. S. 456, 478) where the court said: "The new Act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals,
169 their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

This broad supervisory power, it is urged, does not extend to the requirement that an interstate carrier or system of carriers may be required by the commission to install an interstate union station; but running throughout the act are provisions which authorize the commission to impose most drastic limitatons on a carrier's control and use of its property in order to secure the convenience and welfare of the shipping and traveling public in interstate commerce. It specifically imposes upon the commission the power and duty, when required by public convenience and necessity, to convert the passenger and freight station of one interstate carrier into a union station or depot. The inconsistency of granting this power without the analogous power of requiring a number of carriers converging at a given point to erect for the convenience of the traveling public and the carriers themselves an interstate union station is pointed out in the Los Angeles case, 344, where the court said: "This would be

giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers
170 limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations or interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of section 402."

Under this construction of paragraphs 18 to 21, it is clear that an interstate carrier is not permitted to extend its line of railroad, or to construct a new line, or acquire a line of road or extension thereof, or engage in transportation over such line or lines, until it has procured from the Interstate Commerce Commission a certificate that public convenience requires it. Neither can a carrier abandon all or any portion of its line without a similar certificate. As was further said in the Los Angeles case: "Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals. * * * Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and extend their main tracks thereto as ordered by the State Railroad Commission."

171 Following this suggestion, the Interstate Commerce Commission issued the following certificate: "It is hereby certified, that the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company, of extensions of their respective main lines of railroad in the City of Los Angeles, California, so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment and operation of all passenger and freight train service, except incidental freight-train and freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to east Fifteenth Street, inclusive, in the City of Los Angeles, California; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, California, as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal."

It will be observed that the commission in its certificate as to necessity and convenience omits any certification to the fact "that the expense involved therein will not impair the ability of the carrier to perform its duty to the public". This, however, we think is affirmatively implied in the certification as to necessity and convenience. Especially in view of the findings of fact found by the commission in its earlier decision (100 I. C. C. 421, 459, 460), to the effect that the public convenience and necessity requires "the extension by defendants of their respective main lines of steam railroad in the City of Los Angeles, so as to reach and properly serve any union passenger station and terminal" at the point designated. Following these findings of fact, the commission further found as follows: "That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public." In view of this express finding of fact by the commis-
173 sion, the court would certainly not be justified in failing to determine the fundamental question of jurisdiction here involved merely upon the failure of the commission to make an express certification on this point. The point at most is not jurisdictional but incidental to the exercise of jurisdiction by the commission. The question before us is not one involving direction of the commission as to how it shall act, but merely the requirement that it take jurisdiction of the matter of establishing proper terminals and a union station at the point designated and proceed therein as required by law. (Interstate Commerce Com. *vs.* Humboldt Steamship Co., 224 U. S. 474.)

We think the act clearly manifests the intention of Congress to give the Interstate Commerce Commission jurisdiction over the rearranging and extension of terminals and the establishment of union depots by converging interstate railroad lines, and to limit the jurisdiction of State commissions to matters purely intrastate and such exercise of police power as may be essential over interstate lines within the State.

Paragraph 22 of section 402 provides as follows: "The authority of the commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment
174 of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or all street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation".

The court in the Los Angeles case (345) interpreted the above limitation upon the power of the Interstate Commerce Commission as follows: "There is a palpable distinction between the main tracks of an interstate carrier, and its spur, industrial, switching or side tracks, and shows the legislative intention to retain any substantial change in the main tracks within the control of the Interstate Commerce Commission. It may well be that a mere relocation of a main

track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in designation does not come within paragraphs 18 and 21. One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a State commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate
175 Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers".

We come now to the conceded facts as set forth in paragraph XVIII of the petition. The railroad terminal properties and trackage which would be used in carrying out the union depot plan, including the entire trackage along the Los Angeles River and nearly all of the land on which the union station is to be erected, are now owned by the three carriers here involved. The small portion of land still in private ownership is needed only for a proper approach to the main depot and for properly completing the project as planned. This land could be acquired, of course, by the carriers, either by purchase or by eminent domain under direction of the appropriate public authority.

It thus appears that the whole project is such that under the act it has been removed from the jurisdiction of the State commission and placed within the jurisdiction of the Interstate Commerce Commission. If, in carrying out the project, necessity arises for the state to exercise its police power in the matter of protecting street crossings, etc., it would be merely incidental to the general scheme, cooperative with and not hostile to the jurisdiction of the Interstate Commerce Commission.

The broad power conferred upon the Interstate Commerce
176 Commission is set forth in paragraphs 3 and 4 of section 405 of the act. Paragraph 4 empowers the commission to regulate the terminal facilities of converging carriers to the extent of requiring an interchange of trackage by the different lines to facilitate the better operation and handling of freight and passengers.

Paragraph 3 provides as follows: "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, or charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper." This section,

we think, vests the Interstate Commerce Commission with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines. The term "reasonable, proper, and equal facilities" is broad and comprehensive enough to include not only trackage but adequate station facilities.

177 The carriers, through counsel, challenge the constitutional power of Congress to vest the Interstate Commerce Commission with jurisdiction to order the construction and operation of a union passenger station as prayed for by the city of Los Angeles. This contention is based on decisions of the courts to the effect that the commission may not order the carriers to perform a different service than that which they have undertaken to render. It is well established that while public authority under legislative sanction and in the exercise of police power may require railroad companies to construct and operate union passenger stations, the facts upon which such orders are based must be reasonable.

In view of the facts in the instant case, the contention that the carriers can not be required to extend their tracks to reach the proposed union station is without merit. The situation here disclosed is most reasonable, and well within the jurisdiction of administrative authority. The three interstate carriers involved all enter the city of Los Angeles from the north, and pass under what is known as the North Broadway Viaduct over the Los Angeles River. The main lines of the Southern Pacific and Santa Fe extend along the west bank of the river, and the main line of the Salt Lake road runs along the east bank. The Santa Fe's track runs directly across the

178 site of the proposed terminal, the Southern Pacific track also extends across the site along Alameda Street, and the Salt Lake's branch line track extends directly across the river from the site. It will be observed that to reach the terminal, instead of any material extension of trackage, it means merely a convenient readjustment of existing tracks.

Prior to the enactment of the transportation act of 1920, the States in many instances, either by constitution or statutes, had vested jurisdiction in their railroad commissions to compel the construction of union stations. (Railroad Commission of Alabama *vs.* Northern Alabama Railway Co., 182 Ala. 357; Railroad Commission of Alabama *vs.* Alabama Great Southern Railway Co., 185 Ala. 354; Mayor of Worcester *vs.* Norwich & Worcester R. R. Co., 109 Mass. 103; Dewey *vs.* Atlantic Coast Line, 142 N. C. 392; State *vs.* St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491.) These State decisions go to the extent of upholding orders requiring a carrier to acquire additional property through eminent domain, the abandonment of existing passenger stations, or the acquiring of the right to use the property of a rival railroad.

It was in effect held by the Supreme Court of California in the present controversy (190 Cal. 214) that the power vested in
179 the State railroad commission of that State had passed by the transportation act of 1920 to the Interstate Commerce Commission. In this instance the State railroad commission derived its jurisdiction through a provision of the constitution of the State of California. It was held, nevertheless, that Congress in the exercise of its Constitutional power to regulate interstate commerce could divest the State railroad commission of its jurisdiction and vest it in the Interstate Commerce Commission. This ruling was affirmed in the Los Angeles case.

The procedure adopted by the city of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles case, where the court said: "We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one."

180 The judgment is reversed with costs, and the cause is remanded for further proceedings, not inconsistent with this opinion.

(Indorsed:) No. 4863. United States of America at the Relation of City of Los Angeles, a Municipal Corporation, appellant, *vs.* Interstate Commerce Commission. Opinion of the court per Mr. Justice Van Orsdel. Court of Appeals. District of Columbia. Filed February 25, 1929. Henry W. Hodges, Clerk.

181 Monday, February 25th, A. D. 1929

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| UNITED STATES OF AMERICA, AT THE relation of City of Los Angeles, a Municipal Corporation, appellant *vs.* INTERSTATE COMMERCE COMMISSION | No. 4863. | January Term, 1929 |

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said Supreme

Court for further proceedings not inconsistent with the opinion of this court.

Per Mr. JUSTICE VAN ORSDEL.

FEBRUARY 25, 1929.

182 In the Court of Appeals of the District of Columbia

UNITED STATES OF AMERICA, AT THE RELATION OF City of Los Angeles, a Municipal Corporation, appellant
*v.*
INTERSTATE COMMERCE COMMISSION APPELLEE
} At Law No. 4863

Application for stay of mandate

Now comes the appellee in the above-entitled cause, by counsel, and moves the court, under rule 24 of the Rules of the Court of Appeals of the District of Columbia, to stay the mandate in the said cause pending application to the Supreme Court of the United States for a writ of certiorari.

DANIEL W. KNOWLTON,
*Attorney for Appellee.*

Acknowledgment of service

Service of copy of the above application for stay of mandate is admitted March 7, 1929.

EDWIN C. BLANCHARD,
*Attorney for Appellant.*

183 (Indorsed:) At Law No. 4863. In the Court of Appeals of the District of Columbia. United States of America, at the relation of City of Los Angeles, a municipal Corporation, appellant *v.* Interstate Commerce Commission, appellee. Application for stay of mandate. Daniel W. Knowlton, counsel for Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Mar. 8, 1929. Henry W. Hodges, clerk.

184 Saturday, March 9th, A. D. 1929

U. S. EX REL. CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, appellant
*vs.*
INTERSTATE COMMERCE COMMISSION
} No. 4863

On consideration of the motion to stay the mandate in the above entitled cause under rule 24, it is ordered by the court that said motion be and the same is hereby granted.

185 In the Court of Appeals of the District of Columbia

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| UNITED STATES OF AMERICA, AT THE RELATION of City of Los Angeles, a municipal corporation, appellant<br>*v.*<br>INTERSTATE COMMERCE COMMISSION, appellee | At Law No. 4863. Designation for transcript on application for writ of certiorari |

The clerk will please prepare a transcript on application for writ of certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the court.
4. The judgment.
5. Application for stay of mandate and order allowing the same.
6. This designation.
7. Clerk's certificate.

DANIEL W. KNOWLTON,
*Attorney for Appellee.*

Acknowledgment of service

Service of copy of the above designation is admitted March 7, 1929.

EDWIN C. BLANCHARD,
*Attorney for Appellant.*

186 (Indorsed:) At Law No. 4863. In the Court of Appeals of the District of Columbia. United States of America, at the Relation of City of Los Angeles, a Municipal Corporation, appellant, *v.* Interstate Commerce Commission, appellee. Designation for transcript on application for writ of certiorari. Daniel W. Knowlton, Counsel for Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Mar. 9, 1929. Henry W. Hodges, clerk.

187 Court of Appeals of the District of Columbia

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 186, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals per designation of counsel, in the case of United States of America at the relation of City of Los Angeles, a Municipal Corporation, appellant, *vs.* Interstate Commerce Commission. No. 4863,

January Term, 1929, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 11th day of March, A. D. 1929.

[SEAL.] HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

O

Supreme Court of the United States

*Order allowing certiorari*

Filed April 15, 1929

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○

FILE COPY

APR 29 1929
CHARLES ELMORE CR

No. 54

# In the Supreme Court of the United States

OCTOBER TERM, 1928

INTERSTATE COMMERCE COMMISSION, PETITIONER

*v.*

UNITED STATES OF AMERICA, AT THE RELATION OF THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, RESPONDENT

*WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA*

## MOTION TO ADVANCE

DANIEL W. KNOWLTON,
*For Interstate Commerce Commission.*

U.S. GOVERNMENT PRINTING OFFICE: 1929

# In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 782

INTERSTATE COMMERCE COMMISSION, PETITIONER

*v.*

UNITED STATES OF AMERICA, AT THE RELATION OF THE City of Los Angeles, a Municipal Corporation, respondent

*WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA*

## MOTION TO ADVANCE

The Interstate Commerce Commission moves to advance the above-entitled cause for hearing during the next term of the court on a day convenient to the court.

As grounds for this motion it is shown:

Respondent, the City of Los Angeles, filed complaint with the Commission asking, in substance, that certain railroads serving said City be required to construct a union passenger station within the so-called Plaza area and to acquire the land necessary therefor, and that they be required and per-



47036—29

mitted to make such extensions and abandonments of lines and to arrange for such joint use of terminal track and facilities as might be necessary or incidental to the establishment of such union station. The Commission issued its certificates of public convenience and necessity authorizing the extensions and abandonments of lines and joint use of terminal track and facilities, but refused to order the carriers to construct the union station on the ground that it was without authority to make any such order.

Respondent filed a petition in the Supreme Court of the District of Columbia praying for a writ of mandamus to compel the Commission to consider the evidence in the proceedings before it for the purpose of determining whether it should issue an order requiring said railroads to construct such union station. The Commission filed an answer, to which a demurrer was filed by respondent. Said court entered judgment overruling the demurrer and dismissing the petition. The Court of Appeals reversed that judgment and remanded the cause.

In its petition for writ of certiorari, granted by this court on April 15, 1929, the Commission alleges that the Court of Appeals erred in holding that the Commission was clothed with authority to require the railroads to construct the union passenger station, and in construing the decision of this court in *R. R. Comm. of Calif.* v. *Southern Pac. Co.*, 264 U. S. 331, as supporting that holding.

The opinion and judgment of the Court of Appeals will result in other proceedings asking the Commission to require carriers to establish union stations, and the Commission should be promptly advised of its course.

Counsel for the City of Los Angeles authorizes the statement that he agrees an early hearing is desirable.

DANIEL W. KNOWLTON,
*For Interstate Commerce Commission.*

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No. ~~752~~ 54

# In the Supreme Court of the United States

OCTOBER TERM, 1928

INTERSTATE COMMERCE COMMISSION, PETITIONER

*v.*

UNITED STATES OF AMERICA, AT THE RELATION OF CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, RESPONDENT

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF**

DANIEL W. KNOWLTON,
*For Interstate Commerce Commission.*

U.S. GOVERNMENT PRINTING OFFICE: 1929

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# In the Supreme Court of the United States

OCTOBER TERM, 1928

No. —

INTERSTATE COMMERCE COMMISSION, PETITIONER

*v.*

UNITED STATES OF AMERICA, AT THE RELATION OF city of Los Angeles, a Municipal Corporation, respondent

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

The Interstate Commerce Commission, petitioner herein, prays that a writ of certiorari issue in accordance with the provisions of subsection (a) of section 240 of the Judicial Code, as amended and reenacted by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938), to review the judgment of the Court of Appeals of the District of Columbia, entered February 25, 1929. That judgment reversed a judgment of the Supreme Court of the District of Columbia which had dismissed a petition for writ of mandamus to compel this Commission to consider evidence in certain proceedings before it

for the purpose of determining whether it should issue an order requiring certain railroads to construct and use a union passenger station at a certain site in the City of Los Angeles.

STATEMENT OF THE CASE

The controversy had its inception in a proceeding instituted before the Railroad Commission of California by certain civic bodies of the City of Los Angeles against the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, and Los Angeles & Salt Lake Railroad Company, hereinafter called the Southern Pacific, Santa Fe, and Salt Lake, respectively. In that proceeding the State Commission ordered those carriers to acquire sufficient land within what is known as the plaza area in said city for a union passenger station and terminal, to submit plans therefor, and upon their approval by that commission, to proceed with the construction of the station (R. 51, 52).

The carriers took this order by writs of review to the Supreme Court of California and that court in *A., T. & S. F. Ry.* v. *Railroad Comm. of Calif.*, 190 Cal. 214, held that the Transportation Act, 1920, had vested authority over the matter of union terminal depot facilities of interstate carriers in this Commission, thereby divesting the State Commission of the jurisdiction which it had sought to exercise. Upon petition of the State Commission, the Supreme Court of the United States granted writs of certiorari in respect of this decision.

Meanwhile the City of Los Angeles filed complaint with this Commission, asking in substance that said carriers be required to construct a union passenger station within the plaza area and to acquire the land necessary therefor, and that they be required and permitted to make such extensions and abandonments of lines and to arrange for such joint use of terminal tracks and facilities as might be necessary or incidental to the establishment of such union station.

On April 7, 1924, this court rendered its decision in the above-mentioned certiorari proceeding, *Railroad Comm. of Calif.* v. *Southern Pac. Co.*, 264 U. S. 331, wherein the court, in affirming the judgment of the State court, held in substance that the relocation of tracks, which were necessarily incidental to the proposed union passenger station, required a certificate of this Commission under paragraphs (18) to (21) of section 402, Transportation Act, 1920 (paragraphs (18) to (21) of section 1 I. C. C. Act as amended), as a condition precedent to the validity of any action by the carriers or of any order by the State Commission (346), and that until the Commission had acted under said paragraphs (18) to (21) the carriers could not be required to provide a new union station and to extend their main tracks thereto as ordered by the State Commission (348). The court had theretofore said (344) in respect of said paragraphs (18) to (21) that:

> * * * They provide that no interstate carrier shall undertake the extension of its

> line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad, unless and until the Commission shall certify that public convenience present or future requires it, and that no carrier shall abandon all or any portion of its line or the operation of it without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals.

thereby showing that the action of this Commission which was a prerequisite to the building of the union passenger station was not a direct power to order the carriers to abandon existing terminals and to cooperate in the building of the new union station, but was an indirect means of control in respect of any such project, growing out of its power under said paragraphs (18) to (21) to grant or withhold authority for the incidental extensions and abandonments of lines, coupled with the injunction laid upon the Commission by paragraph (21) that it may authorize or order extensions of lines only where it finds that the expense involved will not impair the carriers' ability to perform their duties to the public.

After this court had rendered its said decision the proceeding instituted before petitioner by the

City of Los Angeles was heard. With it were consolidated an application by the Southern Pacific for authority to abandon certain main-line track and the operation of passenger and freight train service (except freight switching service) on Alameda Street and an application by the Southern Pacific and the Salt Lake for authority to construct new, and to extend existing, lines so as to permit the joint use by said railroads of the Southern Pacific's existing passenger station. This Commission, in its report, held that it was without authority to require the construction of the union station. In respect of this feature the report reads:

> We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14778. To make the record clear, we repeat that no question of discrimination or preference is presented here; and that under the issues framed in the complaint in No. 14778 we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants. (R. [redacted]78.)

However, in line with this court's interpretation of its authority the Commission made findings which may be summarized as follows: (1) That the public convenience and necessity require the extensions of lines that may be necessary to reach and serve any union passenger station within the plaza area constructed in accordance with a lawful order

of the State Commission and that may be necessary to provide for the incidental rearrangement of passenger and freight routes, and that the expense involved will not impair the carriers' ability to perform their duties to the public. (2) That public convenience and necessity permit the abandonment of train service on Alameda Street and such other abandonments of lines as would be necessary in connection with the establishment of any such station, so lawfully ordered by the State Commission. The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper operation of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business. As to the application by the Southern Pacific and Salt Lake to extend their lines to permit the joint use of the Southern Pacific's existing station, the Commission's findings were unfavorable and its order denied the application. The Commission's then report was not accompanied by certificates carrying out its findings, and it reserved jurisdiction to alter its findings in the event that the plan of the State Commission, as finally evolved, should be materially different from that "as here considered to be in the public interest". (R. 89.)

Thereafter the State Commission reopened its proceeding and, after further hearing, rendered a decision making the same findings as this Commission and, in addition, findings to the effect that

public convenience and necessity required the construction of a union passenger station within the plaza area, which, in its opinion, could be done at a cost of $10,000,000 in substantial compliance with a plan prescribed by it. (R. 17, 18.) The State Commission issued its order for the carrying out of its findings, which order, however, was to become effective only after this Commission had issued its certificates or orders covering, not alone the extensions and abandonments of tracks involved, but likewise the construction of the union passenger station. (R. 120.)

The City of Los Angeles and the State Commission thereupon filed petitions with this Commission asking that certificates be issued in accordance with the findings theretofore made and, further, for an order requiring the carriers to construct and operate a union passenger station in compliance with the said plan of the State Commission. (R. 19.) After further hearing the Commission reaffirmed its findings theretofore made and issued certificates in conformity therewith. Likewise it adhered to the conclusions expressed in its earlier report that it was without authority "to require the construction of a union passenger station of the character sought by the complaint." (R. 139.) And it, accordingly, refused to issue an order for the construction thereof.

The case was submitted in the Supreme Court of the District of Columbia upon the petition for

writ of mandamus, the rule to show cause, the answer of the Interstate Commerce Commission and the demurrer to said answer. There were included as exhibits to the petition the complaint before the Interstate Commerce Commission and said Commission's first report, the final decision of the State Commission, the petition asking the Interstate Commerce Commission to issue its certificates and order, and said Commission's final report. On October 18, 1928, said court entered judgment overruling the demurrer and dismissing the petition.

On the appeal, that judgment was reversed by judgment of the Court of Appeals of the District of Columbia. The accompanying opinion held in substance that this Commission was clothed not only with supervisory control over the construction of union passenger stations, growing out of its power to grant or withhold permission for the rearrangement of main line track incidental to the establishment of such station, but that it likewise had the direct and affirmative authority to require the carriers to construct and establish new union passenger stations.

## REASONS FOR GRANTING THE PETITION

The reasons relied upon by the petitioner for the issuance of a writ of certiorari and upon which petitioner believes that this petition ought to be granted are as follows:

1. The case involves a question of general importance;

2. The decision of the Court of Appeals of the District of Columbia rests upon an erroneous construction of an applicable decision of this court.

## BRIEF IN SUPPORT OF PETITION

### OPINIONS

No opinion was rendered by the Supreme Court of the District of Columbia. The opinion of the Court of Appeals has not been published but will be found on page 163 of the record.

### JURISDICTION

The order of the Supreme Court of the District of Columbia dismissing the petition for a writ of mandamus was entered October 18, 1928. From this order an appeal was prosecuted to the Court of Appeals of the District of Columbia. (R. 158–161.)

The jurisdiction of this court is invoked under subsection (a) of section 240 of the Judicial Code as amended and reenacted by the Act of February 13, 1925 (c. 285, 43 Stat. 936, 938).

### STATEMENT OF THE CASE

The court is respectfully referred to the statement of the case contained in the petition for the writ of certiorari.

### THE STATUTES

The relator sets forth in paragraph XVI of its petition the provisions of the Act which it considers clothes the Commission with the authority to

acquire the construction of union passenger stations. They are paragraphs (3) and (4) of section 3, paragraph (21) of section 1, and a part of section 12. These provisions are set forth below together with paragraphs (18)–(20) and (22) of said section 1.

Section 3(3) and (4) read as follows:

> (3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.
>
> (4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in

the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

Section 1(18)–(22) of the Act read as follows:

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been

obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: *Provided,* That no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general-steam railroad system of transportation.

The portion of section 12 relied upon by the relator reads as follows:

> * * * and the Commission is hereby authorized and required to execute and enforce the provisions of this Act * * *.

## ASSIGNMENT OF ERRORS

The Court of Appeals of the District of Columbia erred in holding that the Commission was clothed with authority to require the carriers to construct the union passenger station, and in construing the decision of this court in *R. R. Comm. of Calif.* v. *Southern Pac. Co., supra,* as supporting that holding.

## ARGUMENT

*The case involves a question of general importance*

A more important question in the field of railroad regulation can not be readily conceived than that of whether or not the Federal Commission has authority to require railroads serving a city to abandon existing terminals and substitute therefor a new union passenger station. Such authority if possessed would obtain in respect of all railroad junctions, including the innumerable large cities of the country with their residential, commercial, shopping, and municipal centers fixed and established with relation to existing terminals, their great buildings peculiarly adapted to the particular centers in which they stand, and their complicated local transportation and traffic problems now adjusted

to existing terminals and established centers. All these local interests would be vitally affected by the substitution of a union station for present terminals. An unwise selection of its site from the standpoint of the city might badly disrupt property values and likewise the local transportation systems. It might call for terminal tracks over rights of way not best fitted to the safety of the cities' streets, or for viaducts or tunnels in localities poorly adapted to the convenience and best interests of the city. While the federal and local interests will often be in harmony, as they are in the present case, in other instances they will be in conflict. If the Commission's authority attaches it would seem that it could be exerted only to serve the best interests of interstate commerce and, accordingly, that the Commission could give consideration to the local interests only to the extent that injury to those interests would react injuriously upon interstate commerce.

By reason of its power to grant or withhold permission for the incidental rearrangement of main line track the Commission may now prevent the establishment of union stations, whether by voluntary action of the carriers or under order of a State commission, if it considers that the cost will unduly deplete the revenues of the carriers. But the effect of the exercise of that indirect and restrictive means of control would merely be to preserve the existing status in the cities affected. A direct and mandatory authority to require the

building of the station itself and the abandonment of existing terminals is obviously quite a different thing and could not be exercised without active interference in the internal arrangements of the cities. If it had been intended to clothe the Commission with authority of that character unquestionably the intention would have been expressed in plain terms and would not have been left to be implied from provisions of general regulatory nature.

*The Act contains no provisions expressly empowering the Commission to require the establishment of union stations*

The Court of Appeals finds the Commission clothed with authority to require the building of union passenger stations from provisions of the Act of general regulatory character and of broad terminology. It mentions paragraphs (3) and (4) of section 405 of the Transportation Act (paragraphs (3) and (4) of section 3 I. C. C. Act as amended). Paragraph (4) empowers the Commission to require an owning carrier to permit the use by other carriers of its terminals and tracks for a reasonable distance outside thereof. This obviously has reference to existing terminals and not to the building of new union passenger stations and incidental abandonment of existing individual stations, and while the court mentions that the carriers now own most of the land necessary for the

proposed station, it relies upon this paragraph only for the Commission's authority to require "an interchange of trackage" and not to show that it has the power to require the substitution of a new union passenger station in lieu of existing terminals. For this latter authority the Court of Appeals relies upon paragraph (3). That paragraph provides as follows:

> All carriers * * * shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, or charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

The Court of Appeals after stating that this paragraph vests the Commission with almost unlimited power in the matter of establishing terminals and union stations goes on to say:

> The term "reasonable, proper and equal facilities" is broad and comprehensive enough to include not only trackage but adequate station facilities. (R. 169.)

The phrase, referred to, is broad and comprehensive. Indeed, we believe that if Congress had intended to empower the Commission to require the

establishment of union stations, a power which could not be exercised without great interference in the internal affairs of the cities, it would not have employed such general language but would have stated its intention in plain and unmistakable terms, which would have included provisions for securing the cooperation and views of local authorities. In support of this conclusion the court's attention is directed to the following:

1. If the broad duty imposed on the carriers by paragraph (3) to afford reasonable and equal interchange facilities had been intended to authorize the Commission to require the building of new union stations with all the incidents of abandonment of existing terminals, acquisition of new land and rights of way in the midst of great cities, why was it necessary in the preceding paragraph (4) to employ specific and elaborate provisions (see page 10, supra) in empowering the Commission to require one carrier to permit the use by other carriers of its terminals, where the affording of reasonable interchange facilities would be promoted thereby?

(2) When Congress decided to clothe the Commission with authority over abandonments and extensions of lines it did not leave that authority to be inferred from general regulatory provisions but made clear its intention in unmistakable language including provisions for notifying and according hearings to the States (section 1 (18) to (21)). This is true, too, in respect of the provisions giving

the Commission authority over the consolidation of railroad properties (section 5 (5)), over the consolidation of telephone properties (section 5 (9)), and to act directly upon intrastate rates to prevent discriminations against interstate commerce (section 13 (3)).

3. No imperative need exists to read into this general regulatory provision a power so extensively affecting local interests. *Lehigh Valley R. Co.* v. *Pub. Utility Comm.*, 278 U. S. 24. The indirect means of control possessed by the Commission through its authority over the relocation of track that would be necessary in establishing union stations enables it to prevent waste of revenue that might impair the carriers' ability to perform their common carrier service. The situation is analogous to that obtaining before the Commission was given direct authority to act on intrastate rates that discriminated against interstate commerce. The Commission had theretofore had an indirect means of control. *Houston & Texas R. Co.* v. *United States*, 234 U. S. 342. But when Congress decided to clothe it with authority to operate directly on intrastate rates it did so in plain and unmistakable language (section 13(3)); *Wisconsin R. R. Comm.* v. *C., B. & Q. R. Co.* 257 U. S. 563, 584.

4. Not only is the requirement to afford reasonable and equal interchange facilities very general and found in association with provisions mostly directed against discrimination, but also it is one directed to the carriers and not the Commis-

sion. Accordingly, the construction given it by the Court of Appeals is, in effect, that whenever reasonable interchange facilities would be promoted by a union station the carriers would be contravening the provisions of the Act unless they voluntarily undertook the project. In order to find Commission authority to enforce the duties laid upon the carriers by the paragraph (whatsoever they may be) resort must be had to another general provision, namely, that contained in section 12 which reads:

> and the Commission is hereby authorized and required to execute and enforce the provisions of this Act.

It seems inconceivable that, in a matter so important as union stations, both the duty of the carriers to establish, and the authority of the Commission to enforce such duty, would have been left by Congress to be inferred from general provisions.

*The decision of the Court of Appeals rests upon an erroneous construction of the decision of this Court in R. R. Comm. of Calif.* v. *Southern Pacific Co., 264 U. S. 331*

The closing paragraph of the opinion of the Court of Appeals reads as follows (R. 170):

> The procedure adopted by the City of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles Case, where the court said: "We were advised by

> statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one."

We believe that the balance of the concluding paragraph of this court's decision in the *Los Angeles Case* (*R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331) contains its real holding. The whole paragraph reads as follows:

> For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

The court had theretofore (p. 344) carefully described those paragraphs (18) to (21) and had shown that what was called for was the Commission's certificate of authority for extensions or abandonments of lines, which certificate could only be given, at least as to extensions, upon finding by the Commission that the expense involved would

not impair the carriers' ability to perform its duty to the public. Since the establishment of the union station in this instance would necessitate extensive relocation of main track, the court had held (p. 346) that such certificate of the Commission under paragraphs (18) to (21)

> was a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

This latter is the essential holding of the decision and, as just above shown, it is in effect again repeated in the court's closing words. And, moreover, the court had previously discussed the contention made in the case that the extensions of lines referred to in paragraphs (18) to (21) were only those opening up new territory and were not intended to include such as were merely incidental to the rearranging of terminals. It disagreed with that contention (344–345), stating that it was confirmed in its view by the succeeding paragraph (22) which excepts from Commission authority "the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State," thereby showing the legislative intention to retain the more substantial changes in main tracks within the control of the Federal Commission. Continuing, the decision gives recognition to the fact that there would be instances when the State commission could require union stations without the necessity of this

Commission's authority for incidental changes in track. It reads:

> * * * One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso of paragraph 17, section 402 of the Transportation Act shows:
>
> "That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."

The immediately succeeding paragraph shows that the kind of "lawful order of the Interstate Commerce Commission" which the court had in mind, was not an affirmative order requiring the building of union stations. It reads:

> But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

The decision, then, while showing that this Commission's permission for incidental relocation of tracks is a prerequisite to action by the State or the carriers looking to the establishment of union stations if changes in main track and substantial capital outlay are involved, nevertheless recognizes that this Commission's authority even in respect of rearrangement of track may not always be necessary.

This, it seems to us, irrefutably shows that the Commission's authority is not a direct and affirmative authority to require the building of union stations, but is only an indirect and restrictive authority growing out of its power to withhold permission for extensions and abandonments of track, and which may properly be exercised as a "means of control" to prevent the establishment of expensive union stations where tending to impair the ability of the carriers to perform their duties to the public.

Such indirect and restrictive authority, which this court found to be possessed by the Commission, is very clearly a thing apart from a direct and mandatory authority to require the carriers to establish union stations in lieu of their existing terminals. An intent to occupy the whole field in respect of union stations can not be inferred from the fact that Congress has in part occupied the field by giving the Commission such indirect power to prevent their establishment through its authority to permit or forbid the incidental rearrangement of main track. *Savage* v. *Jones,* 225 U. S. 501, 533; *Napier* v. *Atl. Coast Line,* 272 U. S. 605, 611; *Southern Ry. Co.* v. *R. R. Com.,* 236 U. S. 439.

For the foregoing reasons it is respectfully submitted that the petition should be granted.

DANIEL W. KNOWLTON,
*For Interstate Commerce Commission.*

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No. 54

# In the Supreme Court of the United States

OCTOBER TERM, 1929

INTERSTATE COMMERCE COMMISSION, PETITIONER

*v.*

UNITED STATES OF AMERICA, AT THE RELATION OF CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, RESPONDENT

*ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA*

## BRIEF OF INTERSTATE COMMERCE COMMISSION

DANIEL W. KNOWLTON,
*For Interstate Commerce Commission.*

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2. The decision of this court, in the Los Angeles Station Case, that the commission has "means of control over installation of such new union station" in that its permission for incidental extensions and abandonments of lines and for issuance of new securities, if needed, must first be obtained, manifests that commission authority is indirect and restrictive and that it is not a mandatory authority to order the building of new union stations ..... 37

3. The decision in the Los Angeles Station Case, indicating that the commission's control over the installation of new union stations was of permissive and restrictive rather than mandatory character, gives effect to the fact that, while the 1920 amendments to the act extended the Federal regulatory authority in marked degree, still, and doubtless for that very reason, it was the congressional plan to give to the commission a restrictive instead of initiative power over subject-matter intimately affecting local interests or constituting extensive invasions into a field theretofore left to private initiative and managerial discretion, whenever power of that character was fitted to accomplish the end in view ..... 48

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# In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 54

INTERSTATE COMMERCE COMMISSION, PETITIONER

*v.*

UNITED STATES OF AMERICA, AT THE RELATION OF City of Los Angeles, a Municipal Corporation, respondent

*ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA*

## BRIEF OF INTERSTATE COMMERCE COMMISSION

### OPINIONS

No opinion was rendered by the Supreme Court of the District of Columbia. The opinion of the Court of Appeals has not been published but will be found beginning at page 163 of the record. The Commission's two reports herein involved, *Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421 and 142 I. C. C. 489, will be found at pages 49–96 and pages 129–147 of the record.

### JURISDICTION

By petition filed July 12, 1928, respondent sought from the Supreme Court of the District of Columbia

a writ of mandamus compelling petitioner, Interstate Commerce Commission to consider the evidence in certain proceedings before it for the purpose of determining whether the Commission should issue an order requiring certain railroads to build and use a union passenger station in the City of Los Angeles, California. The judgment of the Supreme Court of the District of Columbia dismissing said petition was entered October 18, 1928. Upon appeal this judgment was reversed by judgment of the Court of Appeals of the District of Columbia, entered February 25, 1929.

The Commission filed its petition for writ of certiorari under subsection (a) of section 240 of the Judicial Code as amended and reenacted by the Act of February 13, 1925 (c. 285, 43 Stat. 936, 938), and said petition was granted by this Court April 15, 1929.

## QUESTION

Whether the Commission has the direct and affirmative authority to require railroads serving a city to construct a new union passenger station and use the same in lieu of their existing terminals.

## THE STATUTES

Pertinent provisions of the Interstate Commerce Act (24 Stat. 379) as amended by the Transportation Act of 1920 (41 Stat. 456) are paragraphs (18)–(22) of section 1 and paragraphs (3) and (4) of section 3, and a part of section 12.

Section 1 (18)–(22) of the Act read as follows:

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is pro-

posed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or

any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or persons, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: *Provided,* That no such authorization or order shall be made unless the Commission finds, as to such extension that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

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(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

Section 3 (3) and (4) read as follows:

(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by an-

other carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

Section 12 reads as follows (the portion relied upon by respondent is shown in italics):

(1) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is con-

ducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; *and the Commission is hereby authorized and required to execute and enforce the provisions of this Act;* and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this Act, and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

## STATEMENT

The controversy had its inception in a proceeding instituted before the Railroad Commission of California by certain civic bodies of the City of Los Angeles against the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, and Los Angeles & Salt Lake Railroad Company,

hereinafter called the Southern Pacific, Santa Fe, and Salt Lake, respectively. In that proceeding the State Commission ordered those carriers to acquire sufficient land within what is known as the plaza area in said city for a union passenger station and terminal, to submit plans therefor, and upon their approval by that commission to proceed with the construction of the station. (R. 51, 52.)

The carriers took this order by writs of review to the Supreme Court of California and that court in *A., T. & S. F. Ry.* v. *Railroad Comm. of Calif.*, 190 Cal. 214, held that the Transportation Act, 1920, had vested authority over the matter of union terminal depot facilities of interstate carriers in this Commission, thereby divesting the State Commission of the jurisdiction which it had sought to exercise. Upon petition of the State Commission, this Court granted writs of certiorari in respect of this decision.

Meanwhile the City of Los Angeles filed complaint with this Commission, asking in substance that said carriers be required to construct a union passenger station within the plaza area and to acquire the land necessary therefor, and that they be required and permitted to make such extensions and abandonments of lines and to arrange for such joint use of terminal tracks and facilities as might be necessary or incidental to the establishment of such union station.

On April 7, 1924, this court rendered its decision in the above-mentioned certiorari proceeding, *Rail-*

*road Comm. of Calif.* v. *Southern Pac. Co.*, 264 U. S. 331, wherein the court, in affirming the judgment of the State court, held in substance that the relocation of tracks, which were necessarily incidental to the proposed union passenger station, required a certificate of this Commission under paragraphs (18) to (21) of section 402, Transportation Act, 1920 (paragraphs (18) to (21) of section 1, Interstate Commerce Act as amended), as a condition precedent to the validity of any action by the carriers or of any order by the State Commission (346), and that until the Commission had acted under said paragraphs (18) to (21) the carriers could not be required to provide a new union station and to extend their main tracks thereto as ordered by the State Commission (348). The court had theretofore said (344) in respect of said paragraphs (18) to (21) that—

> * * * They provide that no interstate carrier shall undertake the extension of its line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad, unless and until the Commission shall certify that public convenience present or future requires it, and that no carrier shall abandon all or any portion of its line or the operation of it without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union

> station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals.

thereby showing that the reason why the action of this Commission was a prerequisite to the building of the union passenger station was not because of any direct power to order the carriers to abandon existing terminals and to cooperate in the building of the new union station, but was because the Commission is vested with indirect means of control in respect of any such project, growing out of its power under said paragraphs (18) to (21) to grant or withhold authority for the incidental extensions and abandonments of lines, coupled with the injunction laid upon it by paragraph (21) that it may authorize or order extensions of lines only where it finds that the expense involved will not impair the carriers' ability to perform their duties to the public.[1]

After this court had rendered its said decision the proceeding instituted before the Commission by the City of Los Angeles, asking for an order requiring the railroads to build a new union station at the plaza site, was heard. With it were consolidated an application by the Southern Pacific for

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[1] Under said paragraph (21) the Commission may also order a carrier "to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act." The term "car service" as used in the Act relates to *vehicles* used in the transportation of *property*. (Sec. 1 (10).)

authority to abandon certain mainline track and the operation of passenger and freight train service (except freight switching service) on Alameda Street and an application by the Southern Pacific and the Salt Lake for authority to construct new, and to extend existing lines, so as to permit the joint use by said railroads of the Southern Pacific's existing passenger station. This Commission, in its report, (100 I. C. C. 421) held that it was without authority to require the construction of the new union station. In respect of this feature the report reads at p. 430:

> We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14778. To make the record clear, we repeat that, no question of discrimination or preference is presented here; and that under the issues framed in the complaint in No. 14778 we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants. (R. 58.)

However, in line with this court's interpretation of its authority the Commission made findings which may be summarized as follows: (1) That the public convenience and necessity require the extensions of lines that may be necessary to reach and serve any union passenger station within the plaza area constructed in accordance with a lawful order of the State Commission and that may be necessary to provide for the incidental rearrangement of pas-

senger and freight routes, and that the expense involved will not impair the carriers' ability to perform their duties to the public. (2) That public convenience and necessity permit the abandonment of train service on Alameda Street and such other abandonments of lines as would be necessary in connection with the establishment of any such station, so lawfully ordered by the State Commission. The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper operation of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business. As to the application by the Southern Pacific and Salt Lake to extend their lines to permit the joint use of the Southern Pacific's existing station, the Commission's findings were unfavorable and its order denied the application. The Commission's then report was not accompanied by certificates carrying out its findings, and it reserved jurisdiction to alter its findings in the event that the plan of the State Commission, as finally evolved, should be materially different from that "as here considered to be in the public interest." R. 89.)

Thereafter the State Commission reopened its proceeding, and, after further hearing, rendered a decision making the same findings as this Commission and, in addition, findings to the effect that public convenience and necessity required the con-

struction of a union passenger station within the plaza area, which, in its opinion, could be done at a cost of $10,000,000 in substantial compliance with a plan prescribed by it. (R. 17, 18.) The State Commission issued its order for the carrying out of its findings, which order, however, was to become effective only after this Commission had issued its certificates or orders covering, not alone the extensions and abandonments of tracks involved, but likewise the construction of the union passenger station. (R. 120.)

The City of Los Angeles and the State Commission thereupon filed petitions with this Commission asking that certificates be issued in accordance with the findings theretofore made and, further, for an order requiring the carriers to construct and operate a union passenger station in compliance with the said plan of the State Commission. (R. 19.) After further hearing the Commission reaffirmed its findings theretofore made and issued certificates in conformity therewith. Likewise it adhered to the conclusions expressed in its earlier report that it was without authority "to require the construction of a union passenger station of the character sought by the complaint." *Los Angeles Passenger Terminal Cases,* 142 I. C. C. 489. (R. 139.) And it, accordingly, refused to issue an order for the construction thereof.

The case was submitted in the Supreme Court of the District of Columbia upon the petition for writ of mandamus and exhibits thereto attached,

the rule to show cause, the answer of the Interstate Commerce Commission and the demurrer to said answer. On October 18, 1928, said court entered judgment overruling the demurrer and dismissing the petition.

On the appeal, that judgment was reversed by judgment of the Court of Appeals of the District of Columbia. The accompanying opinion held in substance that this Commission was clothed not only with supervisory control over the construction of union passenger stations, growing out of its power to grant or withhold permission for the rearrangement of main line track incidental to the establishment of such station, but that it likewise had the direct and affirmative authority to require the carriers to construct and establish new union passenger stations.

## ASSIGNMENT OF ERRORS

The Court of Appeals of the District of Columbia erred in holding that the Commission was clothed with authority to require the carriers to construct the union passenger station, and in construing the decision of this court in *R. R. Comm. of Calif.* v. *Southern Pac. Co., supra,* as supporting that holding.

## ARGUMENT

### SUMMARY

1. Since exercise of a power to compel establishment of new union stations in lieu of existing individual stations would vitally affect local interests

and would encroach upon authority heretofore exercised by the States, the lower court's decision, finding the Commission clothed with such authority, is in square conflict with the settled rule that Federal legislation trenching on state authority must be strictly construed, in that said decision rests, not on express language conferring such power, but instead upon various inapt provisions added by the Transportation Act, 1920, or upon provisions of uncertain scope in the early Act, originally put there, and also shown to have been reenacted in 1920, without thought of conferring any such authority.

2. The decision of this Court, in the *Los Angeles Station case*, that the Commission has "means of control over installation of such new union station" in that its permission for incidental extensions and abandonments of lines and for issuance of new securities, if needed, must first be obtained, manifests that Commission authority is indirect and restrictive and that it is not a mandatory authority to order the building of new union stations.

3. The conferring by Congress of a permissive and restrictive authority in this field is in line with its past policy, which has customarily been to give to the Commission a limited power only in the first instance, and that when and if later enlarging that power, to employ express and unmistakable language, including specific provisions for notifying and according hearing to the states, or for securing their cooperation; it is also in harmony with the

general Congressional plan of the 1920 amendments (particularly as evidenced by the consolidation provisions of the Act), to give to the Commission permissive and restrictive authority rather than a compulsory authority over subject-matter intimately affecting local interests or constituting extensive invasions into a field theretofore left to private initiative and managerial discretion, whenever power of that character was fitted to accomplish the end in view.

4. If it should be considered that the State has been altogether excluded and is without power to order installation of the new union station even after obtaining this Commission's certificates in respect of relocation of main line track, still the Commission's mere indirect and restrictive authority to prevent a change in existing status would not be thereby changed into a mandatory power to force new union stations in lieu of existing stations upon the carriers and the cities.

I

**CONGRESS HAS NOT AUTHORIZED THE COMMISSION TO REQUIRE THE BUILDING OF NEW UNION STATIONS IN LIEU OF EXISTING INDIVIDUAL TERMINALS, AND A POWER OF SUCH FAR-REACHING SCOPE SHOULD NOT BE READ INTO THE ACT**

The Commission was created by Congress, and, if it is clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in lieu thereof a new union station at a

new site, that power must be found in the acts of Congress. Such authority, if possessed, would obtain in respect of all railroad junctions, including the innumerable large cities of the country with their residential, commercial, shopping, and municipal centers fixed and established with relation to existing terminals, their great buildings peculiarly adapted to the particular centers in which they stand, and their complicated local transportation and traffic problems now adjusted to existing terminals and established centers. All these local interests would be vitally affected by the substitution of a union station for present terminals. An unwise selection of its site from the standpoint of the city might badly disrupt property values and likewise the local transportation systems. It might call for terminal tracks over rights of way not best fitted to the safety of the city's streets, or for viaducts or tunnels in localities poorly adapted to the convenience and best interests of the city. Moreover, regarding the matter solely from the standpoint of the railroads, authority in the Commission to require them to build new union stations is not a matter which Congress would have been likely to leave to inference. Its exercise would compel them to abandon existing terminals and rights of way, to acquire new land and rights of way and enter upon new construction, the new undertakings to be cooperative and, therefore, necessarily entailing either that the Commission determine the indi-

vidual investments in, and the extent of the use to be made by each carrier of, the joint property or that those matters must be settled by voluntary adjustment.

By reason of its power to grant or withhold permission for the incidental rearrangement of main line track the Commission is now possessed of an indirect means of control over the establishment of union stations whereby it may prevent the same if it considers that it would result detrimentally to the interests of interstate commerce. But the effect of the exercise of that indirect and restrictive means of control would merely be to preserve the existing status of the railroads and cities affected. A direct and mandatory authority to order the establishment of the union station itself, entailing the abandonment of old, and the cooperative acquisition of new, properties and facilities and the disruption of the internal arrangements of the cities, is obviously quite a different thing. If it had been intended to clothe the Commission with authority of such new and extensive character unquestionably the intention would have been expressed in plain terms and would not have been left to be implied from varied regulatory provisions of uncertain scope.

As said in *Savage* v. *Jones,* 225 U. S. 501, at page 533:

> But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not

> to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State. This principle has had abundant illustration.
> * * *.

**1. The Court of Appeals and respondent point to no explicit language empowering the Commission to order the building of union stations, but, instead, rely upon various inapt provisions added by the Transportation Act, 1920, or upon provisions of uncertain scope contained in the early Act, originally put there and also reenacted in 1920, without thought of conferring any such authority**

A review of the record discloses an apparently uniform view that at least prior to the 1920 amendments the Act to Regulate Commerce gave no authority to the Commission to compel the establishment of union stations. The Commission's report states:

> All parties concede that if we have the power to require the construction of a union station, it has come in the transportation Act, 1920 Prior to that enactment such power was clearly in the States. (R. 53, and footnote of State cases, R. 54.)

The decision of the California Supreme Court clearly shows its view that it was the 1920 amendments which divested the State Commission of authority theretofore possessed. And in this, the decision of the Court of Appeals of the District of Columbia apparently concurs. It rests broadly upon

the powers of the Commission as extended by the 1920 amendments and upon the decision of this Court in the *Los Angeles Station Case*, 264 U. S. 331, and other decisions commenting in a general way upon the Commission's enlarged supervisory control. In referring to the Act it specifically mentions paragraphs (18)–(21) of section 1 and paragraphs (3) and (4) of section 3. The Commission's authority under said paragraphs (18)–(21) in respect of the extension and abandondment of lines has already been mentioned and will be further discussed in a later chapter devoted to a detailed consideration of the *Los Angeles Station Case, supra.* Paragraphs (3) and (4) of section 3 will be particularly dealt with in this chapter.

Paragraph (4) empowers the Commission to require an owning carrier to permit the use by other carriers of its terminals, and tracks for a reasonable distance outside thereof. The authority granted by this paragraph is explicit in character in so far as its subject matter is concerned, but, obviously, authority to require one carrier to permit the use by other carriers of its terminals and terminal tracks is not authority to order the building of new union stations. It is true that the lower court stressed the fact that a large part of the land necessary for the station is now carrier-owned. (R. 168.) This land was acquired after the decision in the *Los Angeles Station Case* (R. 25) and doubtless in anticipation of excessive prices in the event that either the California Commission or this Commission should make,

and attempt to enforce, an order requiring the building of the station. But it is not clear what bearing the ownership of this land within the State of California has as indicating that jurisdiction is in this Commission rather than in the State Commission. Authority must still be found empowering this Commission to order the carriers to construct and establish the new union station, entailing, too, the abandonment of their individual stations and lines and rights of way used in connection therewith.

Paragraph (3) of section 3 provides as follows:

> All carriers * * * shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, or charges between such connecting lines, or unduly prejudice any such connecting lines in the distribution of traffic that is not specifically routed by the shipper.

The Court of Appeals after stating that this paragraph vests the Commission with almost unlimited power in the matter of establishing terminals and union stations goes on to say:

> The term "reasonable, proper and equal facilities" is broad and comprehensive enough to include not only trackage but adequate station facilities. (R. 169.)

The phrase referred to is broad, but it is not comprehensive in the sense of all-including language that leaves no doubt of Congress' intention. In fact we believe that if Congress had intended to clothe the Commission with such far reaching authority as that of requiring the establishment of union stations it would not have employed language of indefinite and unsettled scope and meaning, but would have stated its intention in plain and unmistakable terms. In this connection it should be noted that not only is the provision requiring carriers "to afford all reasonable, proper and equal facilities for the interchange of traffic" one that is of indefinite and uncertain scope and found in association with provisions mostly directed against discrimination, but also it is directed to the carriers and not the Commission. The Court of Appeals points to no provision giving the Commission authority to enforce the duties laid upon the carriers by the paragraph, but respondent relies upon a provision contained in section 12, which reads:

> * * * and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; * * * pp. 7-8, *supra*).[2]

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[2] Added by amendment of 1889 (25 Stat. 855, 858), the whole addition reading as follows:

"and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to

The suggestion that Congress, in legislating with respect to the establishment of new union stations—a new field of federal regulatory authority and one intimately affecting local interests—would have left both the duty of the carries to establish, and the power of the Commission to enforce such duty, to be inferred from provisions of such uncertain scope and application, appears to us to have slight persuasive force.

In *United States* v. *Penna. R. R. Co.*, 242 U. S. 208, involving the question as to whether the Commission had authority to require a carrier to furnish special equipment, namely, tank cars, it was urged and apparently accepted as a fact that it was the duty of carriers to furnish upon reasonable request such cars as are reasonably necessary for handling the normal traffic. (Pp. 218, 219.) The controversy in the case centered, not so much around the duty of carriers to provide as it did upon the Commission's authority to enforce the duty (p. 219); and the Commission's authority under section 12 to execute and enforce the provisions of the Act and also its power under section 15 to prescribe just and reasonable "practices" were advanced as showing that it had such author-

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prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States."

ity. Referring to the Commission's authority under section 12 to enforce the Act, the Court indicated that the jurisdiction to enforce the carrier's duty was at common law in the Courts rather than under the statute and in the Commission. (P. 227.) Referring to the contention that the Commission's section 15 authority to condemn unreasonable practices and to prescribe reasonable practices in lieu thereof was applicable, the Court said, at page 229:

> Let us test the contention and see where it takes us. The request was for a special facility, a combination of package and car, and the question then is whether the neglect to provide it or to furnish it was a "practice" within the meaning of section 15. The far-reaching effect of an affirmative answer is instantly apparent, and there must be hesitation to declare it from the use of so inapt a word as "practice." Following a well-known rule of construction, we must rather suppose its association was intended to confine it to acts or conduct having the same purpose as its associates. And there were many such acts for which the word could provide—practices which confused the relation of shippers and carriers, burdened transportation, favored the large shipper and oppressed the small one. These have illustrations in decisions of the Commission. And this was purpose enough, remedied all that was

deemed evil in privately owned cars of any type. Beyond that it was not necessary to go; beyond that there were serious impediments to going; and we can not but believe that *if beyond that it was intended to go there would have been explicit declaration of the intent, with such provision as to notice and time and preparation as its consequences would demand—not ambushed in obscurity and suddenly disclosed by construction to turn accepted custom into delinquency, a construction that could be disputed and was disputed.* (Italics ours.)

It will be understood that under the scheme of the Act the Commission's authority—that is, its authority to enforce through its own proceedings and by its own orders—is not necessarily commensurate with the carriers' duties. Generally speaking, Commission authority is dealt with as a separate thing, and the degrees and kinds of its authority over a particular subject matter have been various. For example, one method of enforcing the provisions of the Act possessed by the Commission is its power to award reparation, and, while it has had this authority ever since its creation, its power to prescribe reasonable rates was not given it until some years later, and that was not extended to include minimum as well as maximum rates until 1920. And in respect of discrimination and undue prejudice, while the Commission could order its

removal, for many years it had to leave to the carriers the particular method of effecting its removal.

Borrowing from the language of the Court in the opinion last quoted from, it is apparent that in the instant case the provisions of section 3 (3) and section 12 have been lifted from obscurity "to turn accepted custom into delinquency." The lower court, while seemingly in full accord with the prevailing view mentioned in the Commission's report that, if the Commission had power to compel the establishment of new union stations, a power theretofore exercised by the States, it had come in the Transportation Act, 1920 (R. 169, 170), yet rests its decision that the Commission now has such power in large measure upon the provision making it the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic, which provision has in substance been in the Act from the beginning. The second paragraph of section 3 of the original Act of 1887 (24 Stat. 379) reads as follows:

> Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as re-

quiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.[4]

As above stated, the general provision contained in section 12 authorizing the Commission to enforce the Act's provisions was added by amendment of 1889.

In *Kentucky & I. Bridge Co.* v. *Louisville & N. R. Co.*, 37 Fed. 567 (149 U. S. 777, appeal dismissed pursuant to 10th rule), it was held, among other things, that the provision making it the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic did not require the defendant carriers to interchange traffic at a new point of connection with another railroad at which point it had no established depot, yards, and other facilities. At page 621 the opinion reads:

> * * * Neither this nor any other provision of the law requires of the common carrier of interstate commerce the duty of either forming new connections or of establishing new stations for the reception and delivery of freights. The act to regulate commerce deals with such common carriers as it finds them, and leaves to them full discretion as to what extensions they will make of their lines, the connections they may form, and the yards

[4] In lieu of the last sentence paragraph (4) was substituted by the 1920 amendment and some minor changes made in the earlier portion of the provision. (See section 3, (3) and (4), p. 6, *supra*.

> and depots they may choose to establish. * * * Congress has certainly not undertaken, even if they possessed the power, to deal with such matters.

In *Alabama Ry.* v. *Jackson Ry.*, 271 U. S. 244, involving the question whether the Commission had power to order switching connections between the track of one railroad and the track of another at a point outside a city, into which the latter road had access, this Court gave consideration to said paragraph (3) of section 3 and the Commission's power in the premises, and said, at pages 248–249:

> The Act to Regulate Commerce, February 4, 1887, c. 104, 24 Stat. 379, provided, by what is now paragraph 3 of section 3, that carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines;" but it did not confer upon the Commission authority to permit and to require the construction of the physical connection needed to effectuate such interchange. * * * It was not until Transportation Act, 1920, c. 91, 41 Stat. 456, conferred upon the Commission additional authority, that it acquired full power over connections between interstate carriers. * * *.

As will later be shown in more detail the Court thereafter went on to hold that power to order *physical connections between lines* had vested in the Commission by reason of the added power given it in 1920 to order extension of lines and to require

one carrier to permit another to use its terminal facilities "including main-line track for a reasonable distance outside of such terminals." (P. 249.)

There appears, then, to be nothing in this record or in the decisions to dispute what is, in any event, probably axiomatic: That the 1887 Act as amended in 1889 did not clothe the Commission with power to compel the carriers to establish new union stations in lieu of their existing stations. Yet the then Act contained the provisions in section 3 making it the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic and also the general provision in section 12 for enforcement of the Act's provisions. The question is then as to what effect can be properly attributed to the 1920 amendments as clothing the Commission with power to require the establishment of new union stations, a power which was theretofore vested in the States and its exercise approved by many State court decisions. (R. 54, 169.) That question will be dealt with in the succeeding chapters but, in passing, attention is called to the statement appearing in the footnote below,[4] made by

[4] The following appears in vol. 58, p. 9, Congressional Record, 66th Cong., 1st sess., Nov. 15, 1919, pp. 8578, et seq.:

Mr. McClintic. Mr. Chairman, I offer the following amendment which I send to the desk and ask to have read.

"The clerk read as follows:

"Amendment offered by Mr. McClintic: Page 55, line 9, after the word "prescribe," insert:

"'*Provided further*, That the commission is hereby given authority to require a carrier to maintain his present ar-

Congressman Esch, Chairman of the House Committee, and in charge of the bill (known as Esch-

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rangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the commission.'"

(There followed a statement by Mr. McClintic showing that his amendment was induced by apprehension that the advantages of joint depots enjoyed by the public under the Railroad Administration would be denied after termination of federal control and that the proposed bill took from the State commissions their powers in respect thereof.)

"Mr. ESCH (8579). Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several States. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the State commissions, and all but one of the States have such commissions. In such small matters, the detail should be left within the jurisdiction of the State authorities, who know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals.

"Mr. MCCLINTIC. Will the gentleman yield?

"Mr. ESCH. But that power will be exercised, I have no doubt, mainly in connection with the terminals in the large cities and in the congested centers. Due to the prohibitive cost of land, it is necessary to get a greater use out of *existing terminals* by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals, but that that power should be exercised as to depots in small communities is not contemplated. That power should be left, as we leave it, to the regulatory bodies of the several States. I now yield to the gentleman from Oklahoma. (Italics ours.)

Cummins Bill) which after some changes became the Transportation Act, 1920. While made during

"Mr. McClintic. Does the gentleman think that the State commissions will have a sufficient amount of jurisdiction to handle a question of this kind?

"Mr. Esch. Most certainly. They do under the powers granted in my State, and I think it is true in many States. I do not know the situation in Oklahoma.

"Mr. McClintic. The gentleman does not feel that this bill takes away any of their jurisdiction?

"Mr. Esch. No.

"Mr. McClintic. Mr. Chairman, upon the statement of the chairman of the committee I will be glad to withdraw the amendment.

"The Chairman. The gentleman from Oklahoma asks unanimous consent to withdraw his amendment. Is there objection?

"Mr. Linthicum. Mr. Chairman, I object.

* * * * *

"The Chairman (8582). The question is on agreeing to to the amendment offered by the gentleman from Oklahoma (Mr. McClintic).

"The question was taken and the amendment was rejected."

The bill (H. R. 10453) had been reported by the House with its report, No. 456 (Cong. Rec., vol. 58, 66th Cong., 1st sess., p. 8265), and was debated (Ibid. 8309–8692). In the proposed bill under consideration at the time the above remarks were made by Congressman Esch the provision in respect of joint use of terminals (H. R. 10453, sec. 405 (2)) were not the same as finally enacted. The provisions of the original bill and the changes made by the Senate amendments and the conference committee are outlined in the following, taken from House Report No. 650 (66th Cong., 2d sess.) submitted by Mr. Esch with H. R. 10453 from committee of conference (59th Cong. Rec. p. 3263; MacVeagh on Transportation Act, 1920, p. 252):

"Section 405 of the House bill provided that the commission might require the terminal of any carrier to be open to the traffic of other carriers upon such terms and for such

debate, it is in the nature of an explanatory statement and is like the statement considered by this court in *Duplex* v. *Deering*, 254 U. S. 443, 474–477, made by a member in charge of a bill under similar circumstances. It was considered in *North Carolina Corp. Comm.* v. *Southern Ry.*, 185 N. C. 435, and by the Commission in its report in this case. (R. 56.) The statement in question shows not only the view that authority over union stations was in the State Commissions prior to 1920, but also that the committee, in framing the new bill, had sought not to encroach on such State authority, and that while there was a provision in respect of joint use of existing terminals, its purpose was to empower the Commission to conserve revenues from the standpoint of the whole transportation service by making full use of existing facilities, although owned by an individual carrier. Such power of

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compensation as the commission might prescribe. The Senate amendment, in section 11, provided that the transportation board might require one carrier to permit another carrier to use its 'terminal or other facilities, including main-line track or tracks for a reasonable distance outside of such terminals,' on such terms as the carriers might agree on or as the board might fix. Section 405 of the conference bill contains provisions on this subject similar to those in the Senate amendment. It is provided that the commission, if it is found to be in the public interest and practicable, may require one carrier to allow another to use its terminal facilities, 'including main-line track or tracks for a reasonable distance outside of such terminal,' on such terms as the carriers may agree upon or as the commission may fix, subject to the right, however, of the carrier whose terminal facilities are thus thrown open to sue for any damages sustained or any compensation owed."

conserving carrier revenues by requiring joint use of existing terminals certainly does not indicate a power to order the carriers to incur a heavy additional drain on their revenues by scrapping their existing terminals and works and constructing a new union station. While there may be instances where such would promote the interests of the community and even the convenience of the traveling public, the power to initiate is left with the carriers or the State, subject, however, to the indirect "means of control" possessed by the Commission (*Los Angeles Station Case* and *Lehigh Valley R. Co.* v. *P. U. Comm.*, discussed infra) to prevent such projects, if so expensive as to impair the carriers' ability to perform their duties to the public—another power of the Commission directed toward the conservation of revenues.

Also since this chapter deals particularly with paragraphs (3) and (4) of section 3, it is not out of place to give consideration to the proper interpretation of those paragraphs as construed together.

It has been above shown that in *Alabama Ry.* v. *Jackson Ry.*, 271 U. S. 244, this Court in effect said that, while the duty of carriers under paragraph (3) to afford reasonable and equal facilities for the interchange of traffic existed under the original Act, the Act did not confer on the Commission the power to order physical connection between the tracks of railroads needed to effectuate such interchange. Thereafter, at page 249, the Court said:

> * * * It was not until Transportation Act, 1920, c. 91, 41 Stat. 456, conferred upon the Commission additional authority, that it acquired full power over connections between interstate carriers. By paragraphs 18–20 added to section 1, it vested in the Commission power to authorize constructions or extensions of lines, although the railroad is located wholly within one State; and by paragraph 21 authorized the Commission to require the carrier "to extend its line or lines." By paragraph 4 of section 3 it empowered the Commission to require one such carrier to permit another to use its terminal facilities "including main-line track or tracks for a reasonable distance outside of such terminal."

And again, at page 250, the Court said:

> * * * Moreover, the establishment of junctions between the main lines of independent carriers is commonly connected with the establishment of through routes and the interchange of car services, and is often but a step toward the joint use of tracks. * * *.

The fact that the Commission has the power to order reasonable facilities for interchange of traffic in the nature of a physical connection between the main line tracks of carriers, does not, as claimed by respondent, make its disclaimer of jurisdiction to compel carriers to establish new union stations one that merely distinguishes between big and little duties. The power to order physical con-

nections between the main-line tracks of carriers is an essential incident to the express powers of the Commission to require extensions of lines and joint use of track and to require the establishment of through routes. Here the union station is the principal thing and the rearrangement of track and joint use thereof are the incidents. And the Commission, the body presumably best fitted to know, has discovered no need for a power to order the establishment of union stations as incidental to the effective exercise of powers expressly conferred upon it. Moreover, a power to compel the installation of new union stations would trench on State authority, whereas, as pointed out in *Alabama Ry.* v. *Jackson Ry., supra,* the power to order physical connection between the main lines of railroads does not. At page 249 of said decision the Court refers to paragraph (22) of section 1, which excludes from the Commission's authority over the extension of lines "spur, industrial, team, switching, or side tracks located wholly within one State" and states that it is clear that the connection here in question is not a track of that character. That is, the Court makes clear that the construction given by it to the statute does not trench on State authority beyond what was contemplated by the statute.

Finally it is clear that the power claimed for the Commission under paragraph (3) to require carriers cooperatively to acquire new land and construct thereon a new union station, entailing, too, complete abandonment of existing individual termi-

nals and lines, is a more, rather than a less, drastic power both in its effect on the carrier and on local interests than that possessed by the Commission under paragraph (4) to require one carrier to permit the use of its terminal by another, for proper compensation. In conferring the latter power by said paragraph (4), Congress recognized the need for clear and unmistakable language, including special provisions for determining the compensation to be received by owning carriers. Surely, if and when Congress decides to empower the Commission to require carriers to cooperate in the establishment of new union stations, it will likewise do so in clear terms, including special provisions, since, coupled with any such joint project, there will necessarily be involved the problem of properly coordinating the individual investments with the use to be made by each carrier of the joint facilities, or of compensating carriers by way of money return, where individual use of the joint facilities is not commensurate with individual investment.

**2. The decision of this Court, in the Los Angeles Station Case, that the Commission has "means of control over installation of such new union station" in that its permission for incidental extensions and abandonments of lines and for issuance of new securities, if needed, must first be obtained, manifests that Commission authority is indirect and restrictive and that it is not a mandatory authority to order the building of new union stations**

The closing paragraph of the opinion of the Court of Appeals reads as follows (R. 170):

> The procedure adopted by the City of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles Case, where the court said: "We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one."

We believe that the balance of the concluding paragraph of this court's decision in the *Los Angeles Case* (*R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331) must be read to comprehend its real holding. The whole paragraph reads as follows:

> For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

Since said paragraphs (18) to (21), so referred to by the Court; merely require that Commission authority must be obtained for any extension or abandonment of lines, the last sentence above quoted indicates that, in the field of new union stations, Commission authority is not direct and initiative in character but is only an indirect and restrictive power arising from the fact that its authority must be had before the rearrangement of track that would be incidental to a new union station can be undertaken.

That this last sentence contains the essential holding upon which the Court's decision rests seems certain, not only from its position at the very end of the opinion, but from the fact that during the course of the opinion it is in substance three times repeated.

Firstly. At page 344 the Court, in discussing the contention that the power given the Federal Commission by paragraph (4) of section 3 to require an owning carrier to permit the use of its terminals and tracks by another carrier did not include the installation of new union stations at new sites, said:

> This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions. We think, however, that *means of control* over

> installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of sec. 402. (Italics ours.)

That the Court did not consider that such power as the Commission had over new union stations came to it through said paragraph (4) of section 3 is shown by its immediate reference to said paragraphs (18) to (21). That it considered that said power was not a direct and mandatory power to order the installation of new union stations, but rather an indirect and restrictive authority, is shown by its significant use of the term "means of control" and likewise by the very nature of the power possessed by the Commission under paragraphs (18) to (21). In the sentence following the above quotation the opinion describes the provisions of those paragraphs and shows that what was called for thereby was the Commission's certificate of authority for extensions or abandonments of lines, which certificate could only be given, at least as to extensions, upon finding by the Commission that the expense involved would not impair the carrier's ability to perform its duty to the public. Directly succeeding this, the Court said:

> Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals.

Secondly. Thereafter the Court discussed the contention made in the case that the extensions of lines referred to in paragraphs (18) to (21) were only those opening up new territory and were not intended to include such as were merely incidental to the rearranging of terminals. It disagreed with that contention (344–345), stating that it was confirmed in its view by the succeeding paragraph (22) which excepts from Commission authority "the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State," thereby showing the legislative intention to retain the more substantial changes in main tracks within the control of the Federal Commission. Continuing, the decision gives recognition to the fact that there would be instances when the State commission could require union stations without the necessity of this Commission's authority for incidental changes in track. It reads:

> * * * One might, too, readily conceive of railroad crossings or connections of *interstate* carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate Commerce

Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso of paragraph 17, section 402 of the Transportation Act shows:

"That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act." (Italics ours.)

The immediately succeeding paragraph shows that the kind of "lawful order of the Interstate Commerce Commission" which the court had in mind, was not an affirmative order requiring the building of union stations. It reads:

But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

Here, then, for the second time, the court shows that the nature of Commission authority is indirect, that is, that its permission for incidental rearrangement of main line track must first be had before the establishment of a union station can be undertaken. Moreover, it should be particularly noted that the above-quoted passages of the opinion recognize that the installation by interstate carriers of a merely local union station, not entailing extensions of main track or substantial outlay of capital, would not trench upon the authority of the Federal Commission in securing proper regulation of an interchange of interstate traffic or passengers, and, therefore, could be ordered by a State Commission without need for obtaining the Federal Commission's permission for extension and abandonment of tracks under said paragraphs (18) to (21). Obviously, if Commission authority operated directly upon the union station itself rather than as a means of control through its authority over incidental abandonments of track and extensions of track, the latter requiring finding by the Commission that the expense involved would not impair the financial stability of the carriers, such authority would attach whether the changes in track in connection with the installation of a union station were in respect of main track or whether or not the relocation of track and kind of station to be constructed entailed substantial outlay of capital.

Thirdly: In concluding its opinion, as heretofore said, the Court approved the course taken by the

City of Los Angeles in applying to this Commission for an order to provide, maintain, and use a union station, but the last paragraph clearly, and for the third time, shows that the nature of the prerequisite order of the Commission was merely its permissive order or certificate under said paragraphs (18) to (21) granting authority for the rearrangement of main-line track that would be incidental to the establishment of the union station. It is again quoted, to wit:

> For the reasons given, we think the course taken by the city of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

It seems clear that, if the Commission had been regarded as having a direct power to require the establishment of union stations to replace existing terminals, the indirect "means of control" vested in it by Congress through its authority over incidental relocation of tracks under paragraphs (18) to (21) would not have been repeatedly referred to. While the Court discussed provisions of the amendments made to the Act by the Transportation Act, 1920, other than paragraphs (18) to (21), its purpose, it seems clear, was to show the generally enlarged supervisory control of the Commission

as demonstrating that, despite the absence of direct power over new union stations, nevertheless, where the installation of such a station would trench on the direct power of the Commission with respect to extensions and abandonments of lines and maintenance of the carriers' financial stability, it was the Congressional intent that Commission action within its said express field should be a condition precedent, even though it might operate to control and restrict a State within its field of intrastate regulation. For example, at page 347, the Court, after pointing to the fact that paragraph (21) of section 1 requires a finding, before any extensions of lines may be authorized or ordered that the expense involved will not impair the ability of the carriers to perform their duty to the public, goes on to discuss another means of control possessed by the Commission. Referring to the Commission's authority under section 20a of the Act to forbid or approve the issuance of new securities, the opinion reads:

> * * * This is, of course, *in pari materia* with the restriction of paragraph 21 of section 402 to prevent a possible impairment of the financial ability of interstate carriers to discharge their interstate commerce duties. Such a heavy burden as that involved in this new union station and the main track changes and extensions and other accessories would in all probability require the three railways to issue new capital securities,

and this could not be done without the approval of the Interstate Commerce Commission. To be sure this provision only becomes operative when securities have to be issued and would not, of itself, prevent action by a state commission until such securities are seen to be necessary, but the provision indicates the general congressional plan.

The congressional plan with respect to issuance of securities was to give the Commission an indirect and restrictive control over projects of the railroads through its authority to approve or disapprove the issuance of securities necessary to finance such projects, and this corroborates what is in any event clearly shown, namely, that the means of control, with which the Court found the Commission clothed, is of indirect and restrictive character and not a direct and mandatory power to require the construction of new union passenger stations. If anything further is needed to show that the decision merely holds that the Commission's power to control action of the States in respect of union stations is of indirect character, resting chiefly upon its authority to prevent financial commitments that might impair the carriers' ability to perform their duties to the public, it is afforded by this court's reference in *Lehigh Valley R. Co.* v. *Bd. of P. U. Commission,* 278 U. S. 24, to its said earlier decision. The *Lehigh Valley Case* involved an order of the New Jersey Commission requiring the Lehigh Valley Railroad to eliminate two grade cross-

ings and to substitute therefor one overhead crossing at an estimated cost of $324,000. In support of its claim that the order was invalid, one of the carrier's contentions was that the expenditure was so unreasonable as to constitute a burden on interstate commerce in violation of the Transportation Act. In upholding the order of the State commission the court, among other things, said:

> * * * It is not necessary for us to controvert the proposition that *unreasonably extravagant* grade crossings are to be enjoined not only as violations of the Fourteenth Amendment but also as forbidden by the Transportation Act.
>
> But we can not see that the rule invoked from either will be violated by the order now made. The care of grade crossings is peculiarly within the police power of the States, *Commission* v. *Pacific Co.*, 264 U. S. 331, 341, and if it is seriously contended that the cost of this grade crossing is such as to interfere with or *impair economical management* of the railroad, this should be made clear. It was certainly not intended by the Transportation Act to take from the States or to thrust upon the Interstate Commerce Commission investigation into parochial matters like this, unless by reason of their effect *on economical management and service,* their general bearing is clear. *Railroad Commission* v. *Southern Pacific Company,* 264 U. S. 331. The latter case makes a distinction between the local character of the usual elimi-

> nation of grade crossings and the vital character from the *standpoint of finance of the investment of large sums* in the erection of a Union Station. (Italics ours.)

To sum up, then, while the decision in *R. R. Comm.* v. *So. Pac. Co., supra,* gave full effect to the Commission's expressly conferred power with respect to lines and preventing waste of the carriers' revenues, even where its exercise would control and restrict the power of the States with respect to installation of union stations, it discovered no congressional intent, by implication from those powers or the general regulatory provisions of the Act, to give to the Commission a direct and mandatory power in the new field of union passenger stations.

**3. The decision in the Los Angeles Station Case, indicating that the Commission's control over the installation of new union stations was of permissive and restrictive rather than mandatory character, gives effect to the fact that, while the 1920 amendments to the Act extended the Federal regulatory authority in marked degree, still, and doubtless for that very reason, it was the congressional plan to give to the Commission a restrictive instead of initiative power over subject matter intimately affecting local interests or constituting extensive invasions into a field theretofore left to private initiative and managerial discretion, whenever power of that character was fitted to accomplish the end in view**

That Congress, in entering into new fields of regulation by the 1920 amendments, intended not to trench on State authority further than as essential to give the Commission full authority to carry out

the powers which were expressly conferred upon it is evidenced by numerous provisions, the most important of which was discussed in the *Los Angeles Station Case, supra,* p. 346, and reads:

> That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act. (Sec. 1 (17).)

No apparent need exists to read into the Act a power so extensively affecting local interests as that of requiring the establishment of new union stations. The indirect means of control possessed by the Commission through its authority over the relocation of track that would be necessary in establishing union stations enables it to prevent waste of revenue that might impair the carriers' ability to perform their common-carrier service. *Lehigh Valley R. Co.* v. *Pub. Utility Commn.,* 278 U. S. 24.

That Congress, in those instances, where it determinded that it was necessary to trench on State authority in order to attain its objectives, used unmistakable language, including provisions for notifying and securing the views of State authorities, is evidenced by the provisions giving the Commission authority to deal with intrastate rates which burden interstate commerce (Sec. 13 (3)) and by

the provisions giving the Commission authority in respect of the consolidation of railroad and telephone properties (Sec. 5 (5) and (9)). That it also used explicit language, where the power conferred, further extended the Commission's authority into the field of managerial initiative is shown by the above-mentioned provisions with respect to joint use of terminals (Sec. 3 (4)) by the provisions giving the Commission power to fix divisions of joint rates (Sec. 15 (6)) and by the recapture provisions (Sec. 15a (5)–(18)). Not only are provisions of this character lacking but the subject of new union stations is not mentioned at all.

That Congress' entry into a new field has customarily been one of cautious approach, giving to the Commission only a limited power in the first instance, is borne out by many instances. Not until 1920 was the Commission given direct authority to act on intrastate rates that discriminated against interstate commerce. The Commission had theretofore had an indirect means of control. *Houston & Texas R. Co.* v. *United States* (*The Shreveport Case*), 234 U. S. 342. When Congress decided to clothe it with authority to operate directly on intrastate rates it did so in plain and unmistakable language, as heretofore said. *Wisconsin R. R. Comm.* v. *C., B. & Q. R. Co.*, 257 U. S. 563, 584. Other instances are those of the gradual development of the Commission's power to establish through routes and to fix divisions of joint rates. (34 Stat. 584; 36 Stat. 539; 37 Stat. 566; 41 Stat.

484.) And it must not be forgotten that not until the Hepburn Act of 1906 was the Commission empowered to prescribe rates for the future, and not until that same Act did the Commission's orders entail penalties for disobedience. When the need for making the Commission's orders "self-executing" was finally demonstrated to the satisfaction of Congress, then provisions were enacted prescribing heavy penalties in the event of disobedience. *Los Angeles Valuation Case,* 273 U. S. 299, 309.

This Court's decision in *R. R. Comm. of Calif.* v. *So. Pac. Ry., supra,* discussed in the last chapter, shows that it was the Congressional plan, not to give the Commission power to order, but only to give it the power to approve or disapprove, the establishment of union stations, such power coming to it indirectly through its authority over the rearrangement of tracks and over the issuance of securities if needed, and through the duty placed upon it not to grant its authority in either case except upon findings that the expense involved will not impair the carriers' ability to perform their duties to the public. This permissive and restrictive, instead of compulsory, power is in line with Congress' past policy of conferring a limited power when entering new fields, and Congress' reasons are well demonstrated in the provisions with which we are here directly concerned and other provisions added by the Transportation Act.

While paragraphs (18)–(21) of section 1 give the Commission power to order as well as authorize ex-

tensions of lines, its authority with respect to abandonment of lines is only permissive. The distinction seems significant. The continued operation of unprofitable branch lines may seriously deplete the revenues of interstate carriers, but their abandonment affects intimately the local interests and, while Congress considered it necessary to clothe the Commission with authority to pass upon and permit abandonments on application of the carriers, it did not see fit to empower the Commission to force abandonments on the managerial discretion of the carriers. Similarly, although Congress considered it necessary to require the carriers to petition the Commission before issuing new securities and to authorize the Commission to approve or disapprove such applications, it did not further invade the field of managerial discretion by giving the Commission an initiative and mandatory authorty to order the issuance of new securities.

Section 5 of the Act presents another outstanding instance of authority not of compulsory character conferred upon the Commission. Thereby the Commission is directed to prepare a plan for the consolidation of the railroads into a limited number of systems, and consolidations by the carriers must be approved by the Commission, but the Commission is not empowered to order consolidations. The section is clear evidence of the view of Congress that consolidations of the railroads into a limited number of systems is desirable in the interest of an efficient transportation service and that the Com-

mission should have supervisory control thereof. Yet Congress stopped short of giving the Commission compulsory powers. *Snyder* v. *N. Y. C. & St. L. R. Co.* (118 Ohio St. 72), 160 N. E. 615, 619; 278 U. S. 578. And the reasons are very apparent. Compulsory powers in such a field would mean that the regulatory authority would be substituted for managerial discretion to the extent of requiring the carriers to divest themselves of properties now owned, to acquire new properties and, generally, to cooperate with other separate corporations to the end of merging themselves into a single company; and, while Congress may ultimately conclude this to be warranted and necessary, it has not yet reached the conclusion that such invasion of the field of private initiative is desirable. Similarly, power in the Commission to require the establishment of new union stations would mean that the carriers could be compelled by an administrative body to divest themselves of existing terminals and rights of way, to acquire new lands and dedicate same to the public service, and to cooperate with other carriers in constructing a union station for common use. Furthermore, in the case of new union stations, there would be entailed the disruption of local interests and interference in civic management, that has been above pointed out. These matters are referred to, not with any thought that Congress could not have clothed the Commission with full power in the field of union stations, but for the purpose of again emphasizing that,

while the authority possessed by the Commission to refuse its permission for the installation of a new union station merely operates to preserve the existing status, the power claimed for it to compel the establishment of union stations would constitute a marked invasion of a new field, trenching far more seriously on local authority.

Repeated decisions of this Court have commented upon the fact that the amendments made to the Act by the Transportation Act, 1920, effected marked departures from the earlier purposes of federal regulation. But this Court has recognized that the power conferred on the Commission by many of those amendments is only a power to permit or authorize and not a mandatory power. *Dayton-Goose Creek Ry.* v. *U. S.*, 263 U. S. 456, 478; *R. R. Comm.* v. *So. Pac. Co.*, 264 U. S. 331, 344, 347; *Chicago Junction Case*, 264 U. S. 258; *Venner* v. *Michigan Cent. R. Co.*, 271 U. S. 127; *New England Divisions Case*, 261 U. S. 184 (footnote 8, p. 190); *Snyder* v. *N. Y., C. & St. L. R. Co.*, 160 N. E. 615, 278 U. S. 578; *Texas* v. *East Tex. R. Co.*, 258 U. S. 204, 217; *Colorado* v. *United States*, 271 U. S. 153, 165. The very fact that Congress was entering into new fields best discloses its reason for clothing the Commission only with such limited powers. In this, Congress has followed its usual course. The history of the Act, as gradually developed by its amendments, shows that Congress has customarily proceeded cautiously, giving to the Commission a limited power in the

first instance, and subsequently, when and if shown to be necessary, enlarging that power.

**4. If it should be considered that the State has been altogether excluded and is without power to order installation of the new union station even after obtaining this Commission's certificates in respect of relocation of main-line track, still this Commission's mere indirect and restrictive authority to prevent a change in existing status would not be thereby changed into a mandatory power to force new union stations in lieu of existing stations upon the carriers and the cities**

It is well settled that, while the federal authority under the Commerce clause is paramount even though trenching upon the reserved power of a State, yet where Congress' occupation of a field is only partial a State is left free to act as to matters not covered by or repugnant to the Federal legislation. *Savage* v. *Jones,* 225 U. S. 501, 533, and cases therein cited. *Sligh* v. *Kirkwood,* 237 U. S. 52; *M. K. & T. Ry.* v. *Harris,* 234 U. S. 412; *Missouri Pac. Ry.* v. *Larrabee Flour Mills Co.,* 211 U. S. 612. It is also settled that federal legislation so trenching upon the power of a State will be strictly construed, that is, that it will be taken to supersede State authority only to the extent necessary to avoid defeating express provisions of the Acts of Congress. *M. K. & T. Ry.* v. *Haber,* 169 U. S. 613, 623; *Savage* v. *Jones, supra,* 533; *Ill. Cent. R. R. Co.* v. *Pub. Utilities Comm.,* 245 U. S. 493, 510; *Lehigh Valley R. Co.* v. *Pub. Utility Comm.,* 278 U. S. 24, 35. And yet it appears that there may be cases

where the federal legislation, although not covering the precise ground of the State Act or the full possible ground (at least in express language) in respect of the subject matter, still shows a plain purpose to divest the State of all authority, making the federal Act the uniform and exclusive legislation and leaving the subject matter untrammeled except as legislated upon by the federal Act. For example, in *N. Y. Cent. R. Co.* v. *Winfield,* 244 U. S. 147, involving the New York Workmen's Compensation Act, which provides for compensation even though injuries are not attributable to negligence of the carrier, and the Federal Employers' Liability Act, which provides no remedy in the absence of carrier negligence, the question was as to whether the State Act was entirely superseded, that is, as to whether its additional provision, compensating for injuries not attributable to an employer's negligence, was made inoperative by the federal Act. The Court held that the State Act was entirely superseded because the Federal Act covered the whole field. As to negligence, the view was that the Act covered this feature in that it evidenced an intention that there should be no compensation unless there was carrier negligence. This view of the court was, apparently, in large part based upon the history of the adoption of the Act, which disclosed a purpose that the National Act should be exclusive in the field, so that the law relating to the subject should be uniform.

Much to the same effect see *Prigg* v. *Pennsylvania*, 16 Pet. 536, 617.

In *Snyder* v. *New York, C. & St. L. R. Co.* (118 Ohio St. 72), 160 N. E. 615, the question was as to whether the Commission's authority to plan for and approve consolidations of the railroads, similar to its permissive authority over new union stations and likewise conferred by the Transportation Act, had superseded State authority in the field of railroad consolidations. There, the Supreme Court of Ohio held that the consolidation, pursuant to the laws of Ohio, New York, and other States, of 5 constituent railroad companies into a single new company was not violative of the consolidation paragraphs of the Interstate Commerce Act. Those paragraphs provide that the Commission shall, as soon as practicable, prepare a plan for the consolidation of the railroads into a limited number of systems; that it shall give due publicity to the tentative plan, and, after reasonable notice, including notices to the Governors of the States, and following hearings, it shall adopt a final plan for such consolidations. The paragraphs thereafter state that it shall be lawful for 2 or more carriers to consolidate, provided that the consolidation must be in harmony with the complete plan and must be approved by the Commission. But the Act does not make consolidations compulsory, and, apparently based in part on this lack of compulsory authority and in part on its view that the Act did not

confer power to approve isolated consolidations prior to the adoption of the complete plans, the Court reached the conclusion that the field was not occupied to the exclusion of State authority. In a per curiam decision of this Court (278 U. S. 578) the case was affirmed on the ground that the consolidation provisions of the Act had "not as yet become applicable to cases like this." From said ground, the inference seems to follow that when the Commission has adopted its plan of consolidation the authority of said States will be superseded. Such authority, was, of course, merely the corporation laws of those states, but the case suggests the interesting alternative questions as to whether, if certain State Commissions had authority to order consolidation, they could, by conforming to the Commission plan and obtaining its approval, order the carriers to consolidate in accordance therewith, or whether, in line with the doctrine of the *Winfield* and *Prigg cases,* the consolidation provisions of the Act, by not giving the Commission the power to compel consolidations pursuant to its plan and in other ways, have sufficiently evidenced the purpose of Congress that consolidation should not be forced upon the carriers.

Similarly, reverting to the matter of new union stations, the doctrine of the *Winfield Case* raises the question as to whether Congress may not have intended to supersede all State authority, despite the fact that it gave to the Commission only limited powers in the field. Commission authority is

purely permissive and restrictive as contrasted with the compulsory power of the California State Commission to order new union stations. The question is, then, as to whether it may be said that Congress, while not giving the Commission compulsory power, still has covered the whole subject matter by evidencing an intention that there should be no compulsory regulatory power, whether federal or state, in this field; and the answer to that question would seem to depend, as in the *Winfield Case,* upon whether or not the Act itself and the proceedings in Congress disclosed a purpose that the National legislation should be exclusive, to the end of uniformity.

Of course the holding in the *Los Angeles Station Case, supra,* to the effect that the Commission's permissive order or certificate for relocation of main track "is a condition precedent to the validity of any action by the carriers or of any order by the State Commission" looking to the establishment of the union station indicates that the State has only been superseded to the extent expressly required by the terms of the Act, that is, that the State can still act after the Commission has passed upon and approved the changes in track and expenditure involved, and that, therefore, the fact that Congress did not itself make provision for compelling the carriers to establish union stations is not to be taken as evidencing an intention to preclude the States from exercising compulsory power after receiving the prerequisite permissive certificate of this Com-

mission. And this, too, is borne out by the legislative history of the 1920 amendments set forth in the footnote at pp. 30–33, *supra*.

But even should it be considered that the State has been altogether excluded and is without authority to order the carriers to construct the station after securing the Commission certificate in respect of extensions and abandonments and expense involved, still that conclusion could not be the source of any implication that this Commission was clothed with compulsory power. Indeed the very doctrine that Congress by its silence shows an intention that a subject matter shall be free of legislation, state or Federal, in the particulars not specified in the Federal Act, would, if applied to this case, have to rest on the premise that Congress has not conferred upon the Commission such compulsory powers. However, aside from this, the marked difference between the mere permissive and restrictive authority of the Commission and a power to compel the establishment of union stations must be kept in mind. Power in the State to order the installation of stations after obtaining the Commission's certificate that the expense involved will not prejudice interstate commerce seems in harmony with the scheme of the Act to leave to local authority matters in respect whereof the local interests are vitally concerned. Whereas it would be entirely out of harmony with the Act to imply from this Commission's mere restrictive authority to prevent a change in existing status as to stations within the

cities a mandatory power to force upon the carriers and the cities the substitution of a union station at a new site, with all the disruption of existing arrangements and settled conditions that would flow therefrom.

Again giving consideration to the consolidation provisions of the Act, it is called to the Court's attention that, similarly as in the case of new union stations, the subject matter contemplates cooperative action by separate individual companies, and it is once more emphasized that in dealing with that subject matter, Congress gave to the Commission power to approve applications of the railroads for permission to effect consolidations but no compulsory authority. Certainly the fact that all state authority over interstate carriers in this field of consolidation may, when the Commission's plan becomes operative, be entirely excluded, could not be urged as changing the character of the authority given the Commission into an authority to force its plan of consolidation upon the carriers. As stated in *Snyder* v. *N. Y., C. & St. L. R. Co., supra,* at p. 619:

> * * * Nowhere in the Act is it declared that consolidations are compulsory and the present inquiries before the committee of Congress relate to the question whether it shall be the policy to make consolidations compulsory. * * *.

Just as it seems impossible to find in the Act compulsory authority to require consolidations so

likewise it seems impossible to find a mandatory power to compel the establishment of new union stations. And, to read into the Act authority of such character, would be to give it a construction contrary to the demonstrated policy of Congress, not only of developing the Commission's powers in new fields by gradual stages, but also of employing express language whenever the power conferred intimately affects local interests.

For the above reasons it is respectively submitted that the judgment of the lower court should be reversed.

DANIEL W. KNOWLTON,
*For Interstate Commerce Commission.*

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1929

INTERSTATE COMMERCE COMMISSION,
*Petitioner,*

vs.

UNITED STATES OF AMERICA, at the relation of CITY OF LOS ANGELES, a municipal corporation,
*Respondent.*

On Writ of Certiorari to the Court of Appeals of the District of Columbia.

## BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF INTERSTATE COMMERCE COMMISSION.

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*United States ex rel. City of Los Angeles v. Interstate Commerce Commission*, Court of Appeals, D. of C., decided Feb. 25, 1929 ..... 6, 16, 52, 74, 81, 100

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*United States ex rel. Kansas City Southern Ry. Co. v. Interstate Commerce Commission*, 252 U. S. 178 ..... 37

*United States ex rel. Louisville Cement Company v. Interstate Commerce Commission*, 42 App. D. C. 514, 246 U. S. 638, 642-3 ..... 36

*United States v. New York Central R. Co.*, 272 U. S. 457, 464 ..... 43

*United States v. Pennsylvania R. R. Co.*, 242 U. S. 208 ..... 61, 71, 85

*Wisconsin, Minnesota & Pacific Railroad v. Jacobson*, 179 U. S. 287, 302 ..... 80

No. 54

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1929

INTERSTATE COMMERCE COMMISSION,
*Petitioner,*

vs.

UNITED STATES OF AMERICA, at the relation of CITY OF LOS ANGELES, a municipal corporation,
*Respondent.*

On Writ of Certiorari to the Court of Appeals of the District of Columbia.

## BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF INTERSTATE COMMERCE COMMISSION.

## *The Facts.*

### I.

### STATEMENT OF CASE.

#### 1. THE ISSUE.

The question at issue in this proceeding is whether the Interstate Commerce Commission has the jurisdiction to make an order requiring the Southern Pacific Company (hereinafter at times referred to as the Southern Pacific), The Atchison, Topeka and Santa Fe Railway Company (hereinafter at times referred to as the Santa Fe) and Los Angeles & Salt Lake Railroad Company (a portion of the Union Pacific's System and hereinafter at times referred to as the Salt Lake) to construct, maintain and operate a union passenger station in a specified area near the Plaza in the City of Los Angeles under the facts which are conceded in this record.

We do not agree with learned counsel for the Interstate Commerce Commission when he says (Brief of Interstate Commerce Commission, p. 2) that the question is:

> "Whether the Commission has the direct and affirmative authority to require railroads serving *a* city to construct a new union passenger station and use the same in lieu of their existing terminals."

We believe that, as thus stated, the question is too broad.

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(NOTE: Throughout this brief, italics, unless otherwise stated, are ours. The printed "Transcript of Record" will be thus referred to throughout this brief—R. ——).

As this Court said in *Railroad Commission of California v. Southern Pacific Company*, 264 U. S. 331, 345 (which case will hereinafter at times be referred to as the *Los Angeles Union Station Case*):

> "One might, too readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of *merely local union stations* or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso of Paragraph 17, Section 402, of the Transportation Act, shows.
>
> "*But there is a great difference between such relocation of tracks or local union stations and what is proposed here.* The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind."

The great differences between these two classes of cases had already been emphasized by this Court when it pointed out that we are dealing here with "three great interstate railway systems in the largest city of our western coast" (p. 342).

*We submit, very respectfully, that the real question now before this Court is whether the Interstate Commerce Commission has the jurisdiction to make an*

*order requiring said "three great interstate railway systems" to construct, maintain and operate a union passenger station in a specified area near the Plaza in "the largest city of our western coast", when the conceded facts show that the carriers not merely already own substantially all the trackage which would be jointly used but also have recently purchased and at this time own more than two-thirds in area of the land on which the union passenger station and appurtenances would be constructed.*

This question is considerably narrower and more restricted than the question as stated by counsel for the Interstate Commerce Commission.

In its first decision in the *"Los Angeles Passenger Terminal Cases"* (100 I. C. C. 421, 426, 430), the Interstate Commerce Commission held that it does not have such jurisdiction and hence refused to give any consideration to matters shown of record for the purpose of determining whether the Commission should issue the requested *order requiring* the construction and use of a union passenger station by said carriers. The Commission said (p. 430):

> "We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14,778 * * * we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants." (Italics by Commission.)

In its second decision, 142 I. C. C. 489, the majority of the Commission reached the same conclusion (p. 496).

On the *merits*, the Commission made all the findings of fact and issued the certificates requested by the City of Los Angeles in said Docket No. 14,778.

In its said *first* decision, the Commission made all the *findings of fact* requested by the City but deferred issuing its *certificates*. In its said *second* decision, the Commission affirmed its *findings of fact* and also issued all the *certificates* necessary under this Court's decision in the *Los Angeles Union Station Case*, 264 U. S. 331.

On the question of *law*, however, the Commission held in both decisions that it did not have the authority to make the final *order requiring* said carriers to construct and operate said union passenger station. The Commission, accordingly, refused to consider the evidence bearing on said issue of law.

The City of Los Angeles has consistently taken the position, ever since it filed its complaint with the Interstate Commerce Commission in said Docket No. 14,778, in 1923, that the Interstate Commerce Commission does have the jurisdiction to make said final *order*. The City has instituted the present proceeding for the purpose of securing a writ of mandamus directing the Interstate Commerce Commission to consider the evidence bearing on said issue of law

and thereafter to make such order as, in the opinion of the Commission, the facts and the merits justify and require.

On February 25, 1929, the Court of Appeals of the District of Columbia held with the City of Los Angeles and directed that the writ of mandamus should issue (R. 163-170).

From that decision, the Interstate Commerce Commission has prosecuted the present proceeding.

**2. THE PLEADINGS.**

**a. Petition for Writ.**

The petition for the writ may be briefly summarized as follows:

Paragraph I alleges that the City of Los Angeles is a California municipal corporation which is located in the County of Los Angeles, State of California (R. 2).

Paragraph II alleges that the Interstate Commerce Commission was created by the Act of Congress of February 4, 1887, refers to the statutes specifying the Commission's powers, duties and responsibilities and alleges that the Commission's principal office is in the City of Washington (R. 2).

Paragraph III alleges that the Southern Pacific, the Santa Fe, the Salt Lake and three other specified carriers are common carriers engaged in transport-

ing passengers and property by railroad to, from and through the City of Los Angeles in interstate and also intrastate commerce, and that each of said carriers is subject to the Act to Regulate Commerce and the acts supplemental thereto and amendatory thereof; also contains allegations with reference to the ownership and operation of the lines of railroad of said carriers; also refers to a map which will be found opposite R. 28, which map shows the location of the lines of railroad of said carriers in the City of Los Angeles (R. 2-3).

Paragraphs IV, V and VI set forth certain physical facts which will be referred to in somewhat more detail in a subsequent portion of this brief under the head of "Physical Facts". Paragraph IV describes the location of the lines of railroad of said carriers in the City of Los Angeles, contains information with reference to the volume of passenger business of said carriers into and out of Los Angeles and draws attention to the fact that the predominating passenger traffic of said carriers in the City of Los Angeles is to and from the north and east (R. 3-6). Paragraph V is addressed to the Alameda Street railroad grade crossing situation and contains allegations with reference to the interest and responsibility of the Southern Pacific, the Santa Fe and the Salt Lake in connection with said railroad grade crossing situation (R. 6-7). Paragraph VI deals with the subject of the existing passenger depots of the Southern Pacific, the Santa Fe and the Salt Lake in the City of Los Angeles (R. 7-9).

Paragraph VII alleges that it is necessary and that the public safety, convenience and necessity require, that the Southern Pacific, the Santa Fe and the Salt Lake construct, maintain and operate a union passenger station and incidental facilities in the Plaza Area in the City of Los Angeles; that if such union passenger station be not constructed, it would nevertheless be necessary for said carriers to expend individually, in the immediate future, several million dollars for the purpose of establishing adequate and convenient passenger station facilities in the City of Los Angeles; and that it is greatly in the public interest and in the interest of said carriers themselves that these expenditures, instead of being made in a competitive and largely wasteful manner, each carrier seeking primarily to advance its own competitive interest or the interest of itself and its particular associates, should be made in a unified manner and in such a way as to avoid duplicate investments and operating expenses, prevent wasteful expenditures and serve the public interest (R. 9-10).

Paragraphs VIII to XV, inclusive, summarize the history of the Los Angeles Passenger Terminal Cases and trace their progress through the Railroad Commission of California, the Supreme Court of California, the Supreme Court of the United States, the Interstate Commerce Commission, the Railroad Commission of California for the second time and the Interstate Commerce Commission for the second time (R. 10-22). A more detailed reference to these allegations of the petition will be set forth in a subse-

quent portion of this brief under the head of "Historical Facts".

Paragraph XVI quotes certain provisions of the Interstate Commerce Act, relied on by the City of Los Angeles, being Paragraphs 3 and 4 of Section 3, Paragraph 21 of Section 1 and a portion of Section 12 (R. 22-4).

Paragraph XVII alleges that each finding of fact contained in the specified decisions of the Interstate Commerce Commission and of the Railroad Commission of California is true and is shown by the evidence before the Interstate Commerce Commission in its said Docket No. 14,778; that a union passenger station constructed, operated and maintained by the Southern Pacific, the Santa Fe and the Salt Lake on said Plaza Area, as prayed for by the City of Los Angeles in said Docket No. 14,778, is a reasonable, proper and necessary facility for the receiving, forwarding and delivering of passengers to and from the several lines of said carriers and lines connecting therewith; that the present and future public convenience and necessity require the construction, maintenance and use of said union passenger station by said carriers and such abandonments and extensions of lines of railroad as are incidental thereto; and that the expense involved will not impair the ability of said carriers to perform their duty to the public. Said Paragraph XVII also alleges that the City of Los Angeles, by formal resolution of its City Council now in full force and effect stands ready to grant such franchises or permits and to enact such ordinances for the opening or closing of

all such public street areas as may be necessary to make fully effective the order for which the City prays in its said Docket No. 14,778 before the Interstate Commerce Commission (R. 24-5).

Paragraph XVIII shows the extent to which the operation of said union passenger station in the Plaza Area in Los Angeles will require the joint use of existing railroad terminal facilities in or adjacent to the City of Los Angeles and alleges that of the total area of 37 acres which would be required for the proposed union passenger station 26.87 acres, being more than two-thirds of the total area, is already railroad terminal land owned by the Southern Pacific and to a small extent by the Santa Fe (R. 25-6). These allegations will be considered in further detail in a subsequent portion of this brief in connection with the Commission's jurisdiction under Paragraph 4 of Section 3 of the Act.

Paragraph XIX refers to the extensions and abandonments of railroad property and the joint use thereof which would be incidental to the use of said union passenger depot (R. 26).

Paragraph XX alleges that the refusal of the Interstate Commerce Commission to consider the evidence in said Docket No. 14,778 for the purpose of determining whether the Commission should issue the order requested by the City of Los Angeles requiring the construction and use by said carriers of said union passenger depot was based solely on a matter of law, namely, on the Commission's opinion that it does not

have the power, authority and jurisdiction to give such consideration to the evidence or to make such order; that in entertaining said opinion the Commission was and is mistaken as a matter of law; that as a matter of law the Commission does have the power, authority and jurisdiction to consider said evidence for the purpose of determining whether it should issue the order as prayed for requiring the construction and use of said union passenger station and thereafter to make an appropriate order based on said evidence; and that, as a matter of law, it is the duty of the Interstate Commerce Commission to give consideration to such evidence and thereupon to issue such order as the facts and the merits justify and require (R. 26-7).

Paragraph XXI alleges that each allegation of fact in the petition and each finding of fact made by the Interstate Commerce Commission or by the Railroad Commission of California is shown by the evidence in the record before the Interstate Commerce Commission in said Docket No. 14,778 (R. 27).

Paragraph XXII alleges that petitioner has no plain, speedy or adequate remedy in the ordinary course of law (R. 27).

The relief prayed for is that peremptory writ of mandamus issue commanding and directing the Interstate Commerce Commission to consider the evidence in its said Docket No. 14,778 for the purpose of determining whether the Commission should issue an order requiring the construction and use of a union passenger station in the City of Los Angeles by the

Southern Pacific, the Santa Fe and the Salt Lake as prayed for by the City of Los Angeles in said Docket No. 14,778 and thereafter to make such order as the facts and the merits justify and require, or, in the alternative, for the issuance of a rule to show cause why a writ should not be issued (R. 27-8).

Copies of the following documents are attached as exhibits to the petition and made a part thereof:

Exhibit A—The complaint of the City of Los Angeles before the Interstate Commerce Commission in said Docket No. 14,778, filed in March, 1923, the first page of which complaint is preceded by a map showing the location of the lines of railroad in the City of Los Angeles in so far as pertinent to this proceeding (R. 29-47);

Exhibit B—First decision of Interstate Commerce Commission in Los Angeles Passenger Terminal Cases—July 6, 1925 (100 I. C. C. 421) (R. 49-96);

Exhibit C—Second decision of Railroad Commission of California—July 8, 1927 (Volume 30, Opinions and Orders, Railroad Commission of California, page 151) (R. 97-114);

Exhibit D—Petition of City of Los Angeles to Interstate Commerce Commission for issuance of certificates and making of final order—July 25, 1927. To this document is attached a copy of California Railroad Commission's Exhibit 4B, showing the plan for the proposed union passenger terminal at the Plaza in Los Angeles (R. 115-128); and

Exhibit E—Second decision of Interstate Commerce Commission in Los Angeles Passenger Terminal Cases—May 8, 1928 (142 I. C. C. 489). To this decision are attached as Appendix No. 1 the 6 numbered findings of fact made by the Interstate Commerce Commission and the Railroad Commission of California and the 4 additional findings of fact made by the Railroad Commission of California and found by the Interstate Commerce Commission to be sufficiently supported by the evidence (R. 128-149).

**b. Answer of Interstate Commerce Commission.**

The Answer of the Interstate Commerce Commission, either by direct admission or by failure to deny, admits all the allegations of fact of the Petition except only the following which we believe may be considered not material and as to which the Commission alleges that it has *no information or belief:*

(a) Allegation that the carriers have made frequent public admission of the necessity, in the public interest, of eliminating all railroad operations along Alameda Street, in Los Angeles, except only industrial switching for freight (Paragraph V of Petition for Writ, R. 6).

(b) Allegations that the total value of the Santa Fe's present passenger station building in Los Angeles with all furniture, parking and paving, does not exceed $50,000.00; that the officials of the Santa Fe have on numerous occasions made

public acknowledgment of the inadequacy of the present passenger station and facilities and of the necessity for an adequate, up-to-date passenger station; and that such station and facilities if provided by the Santa Fe independently without reference to a union passenger station, would cost approximately $1,182,317.00 (Paragraph VI of Petition for Writ, R. 8).

(c) Allegation that the only plan for the elimination of the existing dangerous railroad grade crossings along Alameda Street in Los Angeles consistent with the public convenience and necessity and safety is to change the location of the Southern Pacific's present passenger depot to a site in the vicinity of the Plaza, near the northern entrance to the City, by which plan the trains of the Southern Pacific will be kept off Alameda Street and the Alameda Street grade crossing problem will automatically be solved (Paragraph VI of Petition for Writ, R. 9).

Apart from the above three matters, which we believe are not necessary in the consideration of the issue now before this tribunal, the answer of the Interstate Commerce Commission either expressly or impliedly admits the truth of all allegations of fact in the Petition for the Writ.

While said answer, in the last paragraph of Section IV thereof, denies the allegations of the petition except as expressly admitted, such denial is only "in so far as they *conflict*" either with the allegations of said

answer or with the statements or conclusions of fact contained in the Commission's two decisions of July 6, 1925 and May 8, 1928, which decisions are made a part of the answer. Careful analysis of the petition and the answer shows that no other allegation of the petition as to any question of fact in any way *conflicts* with the allegations of said answer or said two decisions.

c. Demurrer of Relator to Answer.

The relator filed its demurrer to the Commission's said answer, thereby raising squarely the issue of law as to the Commission's jurisdiction, which issue both the relator and the respondent desire to have decided (R. 156-7).

3. ACTION BY SUPREME COURT OF THE DISTRICT OF COLUMBIA.

On October 18, 1928, the matter of the argument on the relator's demurrer to the answer of the Interstate Commerce Commission came on before Honorable William Hitz, Justice of the Supreme Court of the District of Columbia.

The court, at that time, made its order overruling said demurrer, whereupon the City of Los Angeles advised the court that it elected to stand upon its petition. The court thereupon entered judgment dismissing said petition, whereupon the City of Los Angeles noted its appeal in open court to the Court of Appeals.

The appeal was thereupon perfected.

4. ACTION BY COURT OF APPEALS OF DISTRICT OF COLUMBIA.

On January 8, 1929, the appeal was argued before the Court of Appeals of the District of Columbia.

On February 25, 1929, the Court of Appeals, in a decision written by Associate Justice Van Orsdel and concurred in by Chief Justice Martin and Associate Justice Robb, reversed the judgment of the Supreme Court of the District and directed that the writ should issue.

This decision carefully reviewed all the issues presented in briefs and argument by the Interstate Commerce Commission and the City of Los Angeles and also in a brief filed as *amici curiae* by the railroad companies and held that the Interstate Commerce Commission has the power to make an order *requiring* said railroad companies to construct and operate said union passenger station in the designated area near the Plaza in the City of Los Angeles, as urged by the City.

The decision of the Court of Appeals has not, as far as we have been advised, been published. It appears on pages 163 to 170 of the Record.

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## II.

### PHYSICAL FACTS.

The physical facts with reference to the location of the existing lines of railroad of the Southern Pacific, the Santa Fe and the Salt Lake in the City of

Los Angeles, the existing passenger depot facilities, the area in the Plaza District in the City of Los Angeles specified in the decisions of the Railroad Commission of California and referred to in the decisions of the Interstate Commerce Commission as the location for the proposed union passenger depot, and all other physical facts bearing on the present issue, are set forth in Paragraphs IV-VI, inclusive, of the Petition for the Writ and in the decisions of the Interstate Commerce Commission of July 6, 1925, (100 I. C. C. 421), of the Railroad Commission of California of July 8, 1927 (Volume 30, Opinions and Orders, Railroad Commission of California, page 151), and of the Interstate Commerce Commission of May 8, 1928, (142 I. C. C. 489) copies of which decisions, as already noted, are attached to the Petition for the Writ and made a part thereof as Exhibits B, C and E, respectively (R. 49-96, 97-114, 128-149).

The tracks, existing passenger station facilities and area for proposed union passenger station are shown on map marked Exhibit No. 1, copy whereof is inserted opposite the first page of Exhibit A to the Petition for the Writ (R. opposite p. 28).

The plan for the proposed union passenger terminal at the Plaza in Los Angeles is shown on an exhibit marked "C. R. C. Exhibit 4 B", copy whereof is attached to Exhibit D to the Petition for the Writ, at the end of said exhibit (R. opposite p. 128).

1. LINES OF RAILROAD.

The location and volume of passenger traffic of the lines of railroad of the Southern Pacific, the Santa Fe and the Salt Lake within the City of Los Angeles are referred to in Paragraph IV of the Petition for the Writ (R. 3-6).

After a preliminary paragraph which sets forth, in a general way, the facts with reference to the general northerly and southerly location of the tracks of the carriers through the City of Los Angeles and the interference of said tracks at grade with intercommunication between the portions of the City of Los Angeles and other communities located on either side thereof, said Paragraph IV proceeds with more specific allegations with reference to the location of the tracks of the Southern Pacific, the Santa Fe and the Salt Lake, as follows:

a. Southern Pacific.

With reference to the tracks of the Southern Pacific, said Paragraph IV of the Petition alleges as follows:

> "That the so-called 'Coast' and 'Valley' routes of the Southern Pacific Company, herein at times called the Southern Pacific, connecting Los Angeles with San Francisco and with the San Joaquin and Sacramento Valleys, unite at Burbank about 12 miles north of said Southern Pacific Company's so-called Arcade Station in Los Angeles, and extend southerly along the east bank of the Los Angeles River to its juncture with the Arroyo Seco, which drains the territory to the

northeast, in the vicinity of Pasadena; that at said Arroyo Seco, the said Southern Pacific Company's said line of railroad crosses from the east bank to the west bank of the Los Angeles River and thence continues southerly along the river to the North Broadway Viaduct; that the line then crosses under said viaduct and, leaving the river, proceeds southwest along North Spring Street to the northern end of Alameda Street and thence southerly along Alameda Street at grade, crossing many important streets, to the Southern Pacific Company's Arcade passenger station just west of Alameda Street between Fourth and Sixth Streets; that the Southern Pacific Company's Sunset or El Paso route approaches the city of Los Angeles from the east and crosses the Los Angeles River along Alhambra Avenue and then turns south into Alameda Street at North Main Street, a short distance south of the north end of Alameda Street and proceeds thence southerly to the Arcade Station as do the trains from the north; and that south of said Arcade Station the Southern Pacific Company occupies Alameda Street at grade to the southerly boundary of the city with its line to San Pedro and Santa Ana" (R. 4).

**b. Santa Fe.**

With reference to the tracks of the Santa Fe, said Paragraph IV of the Petition alleges as follows:

"That the main line of The Atchison, Topeka and Santa Fe Railway Company, herein at times called the Santa Fe, from the east through Pasadena follows the Arroyo Seco and crosses from the east bank to the west bank of the Los Angeles River just north of said North Broadway Viaduct; that the line thence passes under said Via-

duct and proceeds thence southerly along the west bank of the river across Alhambra Avenue to said company's passenger station on the west bank of the river, just south of First Street; that an alternative route from San Bernardino joins the Los Angeles-San Diego line at Fullerton and enters the city from the southeast, crossing the river from the east bank to the west bank south of Butte Street and following thence north along the west bank of the river to the Santa Fe's said passenger station; and that a local line of the Santa Fe from Redondo and San Pedro joins said last mentioned line near Butte Street." (R. 4-5)

c. Salt Lake.

With reference to the tracks of the Salt Lake, said Paragraph IV of the Petition alleges as follows:

"That the main line of the Los Angeles and Salt Lake Railroad Company, herein at times called the Salt Lake, enters the city from the southeast through a point called Hobart Junction; that said line formerly proceeded up the east bank of the river to the Salt Lake's former passenger station located on the east bank of the river, south of First Street, but that subsequent to the abandonment by the Salt Lake of its said passenger station on or about November 1, 1924, the Salt Lake, as a temporary matter, operates its passenger trains from the east bank to the west bank of the river at or about Butte Street, thence west along said street to a connection with the tracks of the Southern Pacific along Alameda Street and thence north over and along said tracks at grade along Alameda Street to and into the Southern Pacific Company's said Arcade passenger depot; that one line of the Salt Lake continues from Butte Street north along the

east bank of the river, passes under said North Broadway Viaduct and follows thence up the Arroyo Seco to Pasadena; that a branch of said last mentioned line crosses the Arroyo Seco to the north and terminates at Glendale, a suburb approximately 5 miles north of the Arcade station; and that another local line of the Salt Lake from the south serves Long Beach and San Pedro and joins the main line between Hobart Junction and the river." (R. 5)

**d. Volume and Direction of Passenger Traffic.**

Turning now to the subject of the volume and direction of the passenger traffic into and out of the City of Los Angeles, said Paragraph IV of the Petition alleges as follows:

"That over their said lines of railroad the Southern Pacific, Santa Fe and Salt Lake transport into and out of the city of Los Angeles annually in excess of 2,250,000 passengers; that in the transportation of said passengers said carriers operate into and out of said city annually in excess of 12,000 arriving and an equivalent number of departing passenger trains.

"That the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under said North Broadway Viaduct at the entrance to the city from the north, the two former lines being located under said Viaduct along the west bank of the river and the latter line along the east bank; and that the point at which said tracks of said carriers run under said North Broadway Viaduct is located only approximately three-fourths of one mile distant northerly from the so-called Plaza Area as described in the

decisions of the Interstate Commerce Commission and the California Railroad Commission to which reference will hereinafter be made.

"That the predominating passenger traffic of said carriers in the city of Los Angeles is to and from the north and east; that 69 per cent of all scheduled main line passenger trains enter Los Angeles by routes north of said Plaza Area; that 42 out of the 78 main line scheduled passenger trains daily pass under said North Broadway Viaduct and 12 run along Alhambra Avenue; that only 24 of said trains, being less than one-third, enter the city from the south; and that 74 per cent, being nearly three-fourths, of all passengers use routes north of said Plaza Area." (R. 5-6)

**2. ALAMEDA STREET.**

Referring next to the admittedly very serious railroad grade crossing situation on and along Alameda Street, the principal north and south street through the industrial section of the City of Los Angeles, Paragraph V sets forth the situation as follows (omitting one allegation denied by the Commission on the ground that it has no information or belief):

"That Alameda Street is the principal north and south street through the industrial section of the city of Los Angeles; that an enormous volume of east and west traffic, street and interurban electric, vehicular and pedestrian, must cross daily said street and the double-track main line of the Southern Pacific located and operated thereon; that north of the Arcade depot said tracks along Alameda Street are operated by the Southern Pacific and that south of said depot they are operated not merely by the Southern Pacific

but also, since on or about November 1, 1924, by the Salt Lake in connection with its temporary use of said Arcade depot; that the presence along Alameda Street for practically its entire length of said double-track main line of the Southern Pacific at grade is a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west railroad, vehicular and pedestrian traffic and that said situation is constantly becoming more aggravated.

"That not merely the Southern Pacific but also the Santa Fe and the Salt Lake have their duties and responsibilities in connection with said Alameda Street situation.

"That all persons coming to or going from the Santa Fe depot from or to points west of Alameda Street must cross the Southern Pacific tracks located and operated thereon and that the Santa Fe has its passenger depot so located that its passengers are obliged to go through said scene of danger in order to reach it.

"That the same situation would be equally applicable to the Salt Lake if that carrier should return to its passenger grounds on the east bank of the Los Angeles river and that at the present time the Salt Lake, by running its pasenger trains into and out of the Southern Pacific's Arcade station, under said temporary arrangement, along Alameda Street south of the Arcade station, has aggravated and is aggravating the condition along that part of Alameda Street." (R. 6-7)

### 3. EXISTING PASSENGER DEPOTS.

Paragraph VI of the petition next describes the existing passenger depot situation of the Salt Lake, the Santa Fe and the Southern Pacific in the City of

Los Angeles as follows (omitting the allegations denied by the Commission on the ground that it has no information or belief):

**a. Salt Lake Passenger Depot.**

"That the Salt Lake does not now own any passenger depot in the City of Los Angeles; that said carrier formerly owned and operated a passenger station on the east bank of the Los Angeles river, south of First Street; that the passenger station building at said location was a two-story frame building which was erected in 1891 at a cost of approximately $10,000.00; that said structure was inadequate to serve the needs of the traveling public and that its location was inconvenient and its access dangerous to the public; that in the year 1924 a fire fortuitously did some damage to the second story of the building, whereupon the Salt Lake was authorized by the Railroad Commission of California to run its trains into the Arcade depot of the Southern Pacific Company as a temporary matter; that in its said order (Decision No. 13,923, Vol. 25, Opinions and Orders, Railroad Commission of California, p. 281) the said Railroad Commission expressly provided that the Salt Lake should not use the granting of said application either by way of defense or argument on the ground of capital expenditure or on any other ground against any order, or in any proceeding then or thereafter pending before said Commission or any other Commission, court or public tribunal providing for or looking toward railroad or terminal unification in the city of Los Angeles; that the Salt Lake accepted said order of said Railroad Commission, began its operations into said Arcade depot on or about November 1, 1924 and has continuously subsequent to said date

operated its Los Angeles passenger trains into and out of said Arcade passenger depot; that in order to reach said Arcade depot, the Salt Lake operates all its passenger trains at grade on and along Alameda Street from Butte Street on the south to said Arcade depot on the north, across many important public streets and that thereby the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street has been greatly accentuated." (R. 7-8)

b. **Santa Fe Passenger Depot.**

"That the Santa Fe's passenger station in the city of Los Angeles is located along the west bank of the Los Angeles river, south of First Street, and that the depot is a small brick building which was erected in 1893; that the present structure is inadequate and does not meet the reasonable requirements of the traveling public; that substantially all members of the public who have occasion to use the Santa Fe's passenger depot can do so only by crossing Alameda Street and the main line tracks of the Southern Pacific located thereon; and that the Santa Fe's said depot is located on a site which is inconvenient and difficult of access and dangerous to the public desiring to use said passenger depot." (R. 8)

c. **Southern Pacific Passenger Depot.**

"That the Southern Pacific's Arcade passenger depot in the city of Los Angeles was constructed by said carrier in 1915 under authority of an order of the Railroad Commission of California (Decision No. 1090, Vol. 3, Opinions and Orders, Railroad Commission of California, pp. 927-30) made on petition of said carrier; that as the result of public protests on the ground that the elimina-

tion of the Southern Pacific's railroad grade crossings on Alameda Street would be delayed or prevented by the construction of a passenger depot at said point, the Railroad Commission's order authorizing the demolition of the old Arcade passenger depot at said point and the erection of the present depot contained an express provision 'that the tearing down and abandonment of said old depot, and the taking up, relocating and placing of new trackage in connection with said new depot, or the approval of this commission therefor, shall never be used as a defense against the separation of grade crossings in the state of California'; that the public interest and the public safety urgently require the elimination from Alameda Street of all passenger operations and all freight operations of the Southern Pacific and the Salt Lake except only freight switching; that the waiting room of the Arcade depot is now overcrowded daily between the hours of 7 and 8 P. M. and that the building is rapidly becoming inadequate; and that changes and alterations in the building so as to make the same adequate for a number of years longer would cost approximately $500,000.00." (R. 8-9)

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## III.

### HISTORICAL FACTS.

The pertinent historical facts, as set forth in the Petition for the Writ, may be very briefly summarized as follows:

#### 1. CALIFORNIA RAILROAD COMMISSION'S FIRST DECISION.

On December 6, 1921, after an exhaustive investigation and voluminous testimony since 1916, the Railroad Commission of California rendered a decision

(Decision No. 9838, Volume 20, Opinions and Orders, Railroad Commission of California, page 937) ordering the Southern Pacific, the Santa Fe and the Salt Lake to procure sufficient land within a specified area in the Plaza District in Los Angeles for a union passenger station, to prepare and submit plans for such union station, passenger terminal and necessary facilities, and upon approval of the plans by the Commission, to proceed with the construction of such station and terminal (Paragraph VIII of Petition for Writ, R. 10-11).

2. CALIFORNIA SUPREME COURT'S DECISION.

The carriers thereupon took the Railroad Commission's said decision and order to the Supreme Court of California by writs of review. In a case entitled *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, the Supreme Court of California on December 19, 1922 annulled the Railroad Commission's said order on the ground that jurisdiction over the union passenger terminal situation in Los Angeles had, by the Transportation Act of 1920, become vested solely and exclusively in the Interstate Commerce Commission (Paragraph IX of Petition for Writ, R. 11-12).

3. COMPLAINT OF CITY OF LOS ANGELES BEFORE INTERSTATE COMMERCE COMMISSION.

The City of Los Angeles, thereupon, in March 1923, filed with the Interstate Commerce Commission its

formal complaint in Docket No. 14,778, asking the Interstate Commerce Commission to make its *order directing said carriers,* among other matters, *to construct and thereafter operate and use a union passenger depot and appurtenances on the site in the Plaza District in Los Angeles* theretofore specified by the Railroad Commission of California (Paragraph X of Petition for Writ, R. 12-13).

**4. UNITED STATES SUPREME COURT'S DECISION.**

Thereafter, on April 7, 1924, this Court made its decision in a proceeding entitled *Railroad Commission of California v. Southern Pacific Company,* 264 U. S. 331, being a petition by the Railroad Commission of California for a review of said adverse decision of the Supreme Court of California (190 Cal. 214). This Court, in its said decision, affirmed the said judgment of the Supreme Court of California and held that it would be necessary for the Interstate Commerce Commission to make certain *findings of fact* and to issue certain *certificates* preliminary to the issuance of an *order* for the construction and operation of the proposed union passenger station.

This Court also stated that it had been advised by statements at the bar that after the California Supreme Court handed down its decision, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an *order* to provide, maintain and use a union station, that a hearing followed, and that,

pending the decision of this Court, the matter before the Interstate Commerce Commission was being held under consideration. This Court then said:

> *"For the reasons given, we think that the course taken by the City of Los Angeles was the correct one."*
>
> (Paragraph XI of Petition for Writ, R. 13-14)
>
> 264 U. S. 331, 348.

5. INTERSTATE COMMERCE COMMISSION'S FIRST DECISION.

Thereafter, after taking further evidence in said Docket No. 14,778, the Interstate Commerce Commission, on July 6, 1925, rendered its first decision in said Docket (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421). The Commission, in its said decision, made all necessary *findings of fact* but held that it did not have jurisdiction to make the final *order* requested by the City for the construction of a union passenger depot. In this connection, the Commission said (p. 430):

> "We will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants." (Italics by the Commission.)

The Commission held that under the existing circumstances it would issue no *certificates* or *orders* at the time, but would retain jurisdiction of said Docket No. 14,778, pending further possible action by the

Railroad Commission of California (Paragraph XII of Petition for Writ, R. 14-17).

(NOTE: For the 6 numbered *findings of fact* made by the Interstate Commerce Commission in this first decision, see the Note at the end of this Section of this brief and Appendix No. 3.)

6. CALIFORNIA RAILROAD COMMISSION'S SECOND DECISION.

The Railroad Commission of California thereupon reopened the matters pending before it for further consideration and after receiving voluminous additional testimony rendered a further decision on July 8, 1927 (Decision No. 18,593, Volume 30, Opinions and Orders, Railroad Commission of California, page 151). In its said decision, the Railroad Commission made findings of fact substantially identical with the 6 numbered findings of fact theretofore made by the Interstate Commerce Commission and added 4 further findings.

The California Commission thereupon made its order requiring the Southern Pacific, the Santa Fe and the Salt Lake to construct a union passenger station within said Plaza Area at a gross cost of approximately $10,000,000.00 and in substantial compliance with the plan outlined in the Railroad Commission's Exhibit No. 4 B (Paragraph XIII of Petition for Writ, R. 17-19).

(NOTES: 1. For the 4 additional findings of fact made by the California Railroad Commission in this decision, please see the Note at the end of this Section of this brief and Appendix No. 3. The Interstate Commerce Com-

mission, in its subsequent decision, found that these additional findings of fact of the California Railroad Commission "find sufficient support in the record" (142 I. C. C. 489, 496).

2. Said figure of $10,000,000.00, found by the Railroad Commission of California, is the *gross* cost of the new union passenger station and appurtenances. In its first decision of July 6, 1925, the Interstate Commerce Commission found that when due allowance was made for lands now used by the carriers in connection with their present passenger station facilities, which lands would be released for other uses if the Plaza plan were carried out, the *net* new money cost would be reduced to approximately $3,500,000.00 (100 I. C. C. 421, 457).

7. INTERSTATE COMMERCE COMMISSION'S SECOND DECISION.

The City of Los Angeles thereupon filed with the Interstate Commerce Commission in said Docket No. 14,778 its petition dated July 25, 1927 (Exhibit D to Petition for Writ, R. 115-128) advising said Commission, among other matters, of the most recent action taken by the Railroad Commission of California and asking the Interstate Commerce Commission now to issue its *certificates* in accordance with its *findings* in its said decision of July 6, 1925 (100 I. C. C. 421) and also to make its *order requiring* the Southern Pacific, the Santa Fe and the Salt Lake to construct and thereafter maintain a union passenger station and appurtenances within that portion of the Plaza District in the City of Los Angeles which had been specified by the California Railroad Commission and to acquire such land, if any, as might be necessary for said purpose, at a total cost of approximately

$10,000,000.00 in substantial compliance with the plan identified as California Railroad Commission's Exhibit No. 4 B (Paragraph XIV of Petition for Writ, R. 19-20; also see plan opposite R. 128).

After further briefs and oral argument, the Interstate Commerce Commission, on May 8, 1928, rendered its second decision in said Docket No. 14,778 (142 I. C. C. 489). The Commission, in its said second decision, took action as follows:

(1) Reaffirmed the *findings of fact* made by it in its first decision (R. 138; 142 I. C. C. 489, 496);

(2) Adhered to the *finding* in its first decision that the union depot plan as submitted by the City of Los Angeles is *"in the public interest"* (R. 89; 100 I. C. C. 421, 461; R. 138; 142 I. C. C. 489, 496; R. 153);

(3) Found that the four additional *findings* of the California Railroad Commission numbered 7 to 10, inclusive, "find sufficient support in the record" (R. 138; 142 I. C. C. 489, 496, 502-3); and

(4) Issued all *certificates* necessary under this Court's decision in the *Los Angeles Union Station Case,* 264 U. S. 331 (R. 146-7).

In its *majority* opinion, however, the Commission again refused to take the final step of *ordering* the carriers to construct and operate a union passenger depot as prayed for by the City of Los Angeles and to consider the evidence bearing on the propriety of making said order. The Commission again based its refusal to make such order or consider the evidence

bearing thereon on its view that, as a matter of law, it does not have the jurisdiction to make such order.

A separate opinion, filed by Commissioner Eastman and concurred in by Commissioners Lewis and McManamy held that the order requested by the City of Los Angeles should have been issued (142 I. C. C. 489, 498-502). (Paragraph XV of Petition for Writ, R. 20-2.)

(NOTE: For the *certificates* issued by the Interstate Commerce Commission in this decision, see the Note at the end of this Section of this brief and Appendix No. 4.)

**8. PETITION OF CITY OF LOS ANGELES FOR WRIT OF MANDAMUS.**

Thereafter, on July 12, 1928, the City of Los Angeles filed its Petition for the Writ herein.

(NOTE: *Findings of Fact and Certificates.*

For convenience of reference, the Court's attention is invited to the following passages in the Petition for the Writ where the Interstate Commerce Commission's *findings* and *certificates* may be found:

The 6 numbered *findings of fact* made by the Interstate Commerce Commission in its first decision and later reaffirmed in its second decision may be found in 100 I. C. C. 421, 459-60 and are quoted in Paragraph XII of the Petition for the Writ herein (R. 15-16).

The 4 additional *findings of fact* which were made by the Railroad Commission of California and as to which the Interstate Commerce Commission, in its second decision, said that "they find sufficient support in the record", may be found in Volume 30, Opinions and Orders, Railroad Commission of California, pages 151, 161, and are quoted in Paragraph XIII of the Petition for the Writ herein (R. 18).

The entire 10 *findings of fact* are attached as Appendix No. 1 to the Interstate Commerce Commission's second decision of May 8, 1928 (142 I. C. C. 489, 502-3) and are quoted at the end of Exhibit E attached to the Petition for the Writ herein (R. 147-9).

The Commission's *finding* or conclusion that the plan for a union passenger depot submitted by the City of Los Angeles is "in the public interest" may be found in the first decision (100 I. C. C. 421, 461; R. 89). The Commission's adherence thereto in its second decision will be found at 142 I. C. C. 489, 496 (R. 138). The Commission's answer or return to the petition for the writ of mandamus herein emphasizes, in quotation marks, the fact that this finding was made by the Commission (R. 153). The finding is also quoted on page 13 of the Commission's brief on file herein.

The *certificates* issued by the Interstate Commerce Commission in its second decision of May 8, 1928 (in accordance with the decision of this Court in *Railroad Commission of California v. Southern Pacific Company*, 264 U. S. 331) are attached at the end of the decision in 142 I. C. C. 489 and are reproduced at the end of Exhibit E attached to the Petition for the Writ herein (R. 146-7).

The Court is further referred to the following Appendices to this brief:

Appendix No. 3—Findings of Fact of Interstate Commerce Commission.

Appendix No. 4—Certificates issued by Interstate Commerce Commission.)

## *The Law.*

### I.

### MANDAMUS THE PROPER REMEDY.

The petition herein was filed under the provisions of Sections 1273-82 of the Code of the District of Columbia, relating to the subject of Mandamus.

That mandamus is the proper remedy in this case appears clearly from a number of decisions of this Court in which writs of mandamus were asked against the Interstate Commerce Commission.

In *Interstate Commerce Commission v. United States ex rel. Humboldt Steamship Company,* 37 App. D. C. 266, 224 U. S. 474, the relator, Humboldt Steamship Company, filed in the Supreme Court of the District of Columbia a petition for a writ of mandamus directing the Interstate Commerce Commission to take jurisdiction over certain common carriers in the territory of Alaska. The Humboldt Steamship Company had filed a complaint before the Commission against certain railway and steamship companies doing business in Alaska to require them to file their tariffs and to establish through routes and joint rates and to afford reasonable, proper and equal facilities for the interchange of traffic between their respective lines.

After a hearing, the Commission decided that it was without jurisdiction to make the order and dismissed the complaint.

The petition for writ of mandamus was then filed with the Supreme Court of the District, which Court dismissed the petition.

On appeal, the Court of Appeals reversed the decision of the lower Court and held that the writ should have issued (37 App. D. C. 266). This Court, in a decision by Mr. Justice McKenna, affirmed the decision of the Court of Appeals and held that if the Interstate Commerce Commission refuses to act and denies its power, from a misunderstanding of the law, it can be required, by mandamus, to proceed to the merits of the controversy.

The striking analogy between that case and the present case is quite obvious.

In *United States of America ex rel. Louisville Cement Company v. Interstate Commerce Commission,* 42 App. D. C. 514, 246 U. S. 638, this Court reversed the Supreme Court of the District and the Court of Appeals in a mandamus proceeding against the Interstate Commerce Commission and held that a writ should issue commanding the Interstate Commerce Commission to proceed to the disposition of a shipper's claim for overcharges under the construction placed upon the Commission's jurisdiction by this Court. The Commission had held that it was without jurisdiction to proceed.

At pages 642-3, this Court said:

> "That the Supreme Court of the District of Columbia, in a proper case, has power to direct

the Commission by mandamus to entertain and proceed to adjudicate a cause which it has erroneously declared to be not within its jurisdiction, is decided in *Interstate Commerce Commission v. United States,* 224 U. S. 474." (The Humboldt Steamship Company case.)

To the same effect, see also

*United States ex rel. Kansas City Southern Ry. Co. v. Interstate Commerce Commission,* 252 U. S. 178.

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## II.

### LEGAL SITUATION PRIOR TO TRANSPORTATION ACT, 1920.

Prior to the enactment of the Transportation Act, 1920, it seems quite clear that the Railroad Commission of California had full power and authority to make an order for the construction, maintenance and operation by the Southern Pacific, the Santa Fe and the Salt Lake of a union passenger station in the Plaza Area in Los Angeles.

*Constitution of California,* Article XII, Section 22;

*Constitution of California,* Article XII, Section 23;

*Public Utilities Act of California* (Stats. 1915, p. 115, as amended), Section 13(b), Section 22(a), Section 30, Section 31 and Section 36).

In *Civic Center Association v. Railroad Commission of California,* 175 Cal. 441, the Supreme Court of Cal-

ifornia issued its mandate directing the Railroad Commission of California to take jurisdiction over the complaints which had been filed with it involving not merely the railroad grade crossing situation in Los Angeles but also the union station issue. The proceedings subsequently taken by the Railroad Commission of California were taken in pursuance of said writ.

In *Atchison, Topeka & Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, 226-7, the Supreme Court of California decided that by reason of the enactment of the Transportation Act, 1920, the power and authority of the California Railroad Commission to make an order directing the Southern Pacific, the Santa Fe and the Salt Lake to construct and operate a union passenger station in the City of Los Angeles had been *"divested"* from the Railroad Commission and had become *"vested"* in the Interstate Commerce Commission. The use of the term "divested" shows clearly that it was the opinion of the Supreme Court of California that the California Commission, prior to the enactment of the Transportation Act, 1920, had been vested with authority to require the carriers to construct a union passenger station, but the court concluded that Congress, in enacting the Transportation Act, 1920, had divested this jurisdiction from the California Commission and had vested it in the Interstate Commerce Commission.

Hence, it would seem to be quite clear that if it had not been for the enactment of the Transportation Act,

1920, the Railroad Commission of California would have had complete jurisdiction to make the order which it actually did make directing said three carriers to construct and operate said union passenger station in the City of Los Angeles.

However, the Supreme Court of California decided that this power had become vested in the Interstate Commerce Commission and the City of Los Angeles accepted said decision and in March, 1923, filed its complaint in said Docket No. 14,778, with the Interstate Commerce Commission asking that Commission to make its order requiring said carriers to construct and operate said union passenger station.

(NOTE: Prior to the effective date of the Transportation Act, 1920, it had been uniformly decided by state courts that where the authority has been conferred the states might lawfully require the construction and operation of union passenger stations whenever, on the facts, such order would be reasonable.

*Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 69 So. 749;

*Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 183 Ala. 354, 64 So. 13;

*Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Company*, 109 Mass. 103;

*Dewey v. Atlantic Coast Line et al.*, 142 N. C. 392, 55 S. E. 292;

*Missouri O. & G. Railway Co. v. State*, 29 Okl. 640, 119 Pac. 117;

*State v. St. Louis Southwestern Railway Co.* (Tex. Civ. App.), 165 S. W. 491;

*Gulf, Colorado & Santa Fe Railway Company, et al. v. State* (Tex. Civ. App.), 167 S. W. 192.

*State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 199 S. W. 829.)

## III.

### TRANSPORTATION ACT, 1920— NEW NATIONAL RAILROAD POLICY.

The new national railroad policy established by Congress in the Transportation Act of 1920 has been reviewed by this Court in a number of decisions.

In *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company,* 257 U. S. 563, decided on February 27, 1922, the Interstate Commerce Commission had ordered that undue discrimination against Wisconsin interstate passengers should be removed by increases in all intrastate passenger fares and excess baggage charges. In upholding the Commission's power and authority, this Court reviewed a number of sections of the Interstate Commerce Act, as amended, not directly dealing with the subject of discrimination, in order "to show the scope of the congressional purpose in the act". In so doing, this Court referred to the Commission's newly granted power over

> "1st, the issuing of future railroad securities by the interstate carriers; 2nd, the regulation of their car supply and distribution and the *joint use of terminals;* and 3rd, their construction of new lines, and their abandonment of old lines." (p. 585.)

This Court then held that where the "general words" used in connection with the subject of discrimination

> "aptly include a kind of discrimination against interstate commerce which the operation of the new

act for the first time makes important, and which would seriously obstruct its chief purpose, we cannot ignore their necessary effect." (p. 587.)

This Court further held:

"Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the nation, cannot exercise complete, effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso." (p. 588.)

In *Akron, Canton & Youngstown Railway Company v. United States,* 261 U. S. 184, decided on February 19, 1923, also known as the "New England Divisions Case," this Court sustained the provisions of the Transportation Act of 1920, authorizing the Interstate Commerce Commission to prescribe the divisions of joint rates between connecting carriers and directing that in so doing the Commission shall give consideration to the importance to the public of the transportation service rendered by the several carriers and to the revenues needed by the individual carriers to enable them to pay a fair return on their railway property.

This Court referred to the "new railroad policy" and reviewed the provisions of the Transportation Act conferring new and enlarged powers upon the Interstate Commerce Commission (pp. 189-190).

This Court affirmed the "two new devices" of group systems of rate making and the divisions of joint rates in the public interest (p. 191) and significantly held:

> "Obviously, Congress intended that a method should be pursued by which the task, which it imposed upon the commission, could be performed." (p. 197.)

In *Dayton-Goose Creek Ry. Co. v. United States,* 263 U. S. 456, decided on January 7, 1924, involving the recapture of excess earnings under Section 15a of the Interstate Commerce Act, this Court said:

> "To achieve this great purpose (to allow the railroads to earn sufficient revenues to keep their property in proper efficiency) it (the Transportation Act) puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates and by fixing adequate rates for interstate commerce and, in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carrier engaged." (p. 478.)

In the *Los Angeles Union Station Case,* 264 U. S. 331, 341-2, decided on April 7, 1924, this Court quoted with approval its above language from the *Dayton-Goose Creek Railway Company* decision bearing on the new national railroad policy.

In *United States v. New York Central Railroad Company,* 272 U. S. 457, decided on November 22, 1926, in which case the Interstate Commerce Commission had made an order directing that transportation service be provided between the terminal of the Erie Canal in Buffalo and the line of railroad of New York Central Railroad Company, this Court held that the jurisdiction of the Interstate Commerce Commission over the carriers at a point where interchange of traffic is sought and the facilities by which transportation is carried on extends to *"the entire current of commerce"* flowing through the terminal, although such commerce is, in part, intrastate. At page 464, this Court said:

> "Where as here interstate and intrastate transactions are interwoven, the regulation of the latter is so incidental to and inseparable from the regulation of the former as properly to be deemed included in the authority over interstate commerce conferred by statute." (Citing numerous decisions.)

There would seem to be a striking analogy between the situation in the case last above referred to and the case of a union passenger depot of three great interstate railroads in the largest city west of the Mississippi River where the current of passenger traffic flowing through the union passenger depot would be very largely interstate, as pointed out by this Court in its decision in the *Los Angeles Union Station Case,* supra.

In a subsequent portion of this brief, we shall devote ourselves specifically to the new national railroad policy with reference to *union passenger stations,* resulting from changes in the law made effective by the Transportation Act, 1920.

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## IV.

### LOS ANGELES UNION STATION CASE— U. S. SUPREME COURT.

In the *Los Angeles Union Station Case,* 264 U. S. 331, this Court affirmed the decision of the Supreme Court of California which had held that full power and authority over the construction of the union passenger station in Los Angeles is now vested in the Interstate Commerce Commission.

We consider the following matters, among others, in connection with said decision to be significant:

#### 1—THE ISSUE, AS UNDERSTOOD BY THIS COURT.

What did this Court understand to be the issue on which it affirmed the decision of the Supreme Court of California?

Chief Justice Taft stated that issue in the very first paragraph of the decision as follows (p. 338):

> "The question in this case is whether the State Railway Commission of California has power to require the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company and

> the Los Angeles and Salt Lake Railway Company to build an interstate union depot in the city of Los Angeles."

Continuing, the Court said (p. 338):

> "The Supreme Court of the State held that the order was beyond the power of the State Railway Commission, because the subject matter was committed to the Interstate Commerce Commission by the Transportation Act of 1920."

On that issue, the decision of the Supreme Court of California was affirmed.

**2—NEW NATIONAL RAILROAD POLICY.**

At the threshold of its analysis of the arguments of counsel, the Court (p. 341) quotes from *Dayton-Goose Creek Railway Company v. United States,* 263 U. S. 456, to the effect that it is the purpose of the Transportation Act, 1920, to put "the railroad systems of the country more completely than ever under the fostering guardianship and control of the Interstate Commerce Commission."

**3—ANALYSIS OF PROVISIONS OF TRANSPORTATION ACT.**

The Court then refers to various provisions of the Transportation Act, including Paragraphs 3 and 4 of Section 3 of the Act, as amended (on both of which Paragraphs we rely) and says (p. 343):

> "It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce

Commission *all increased facilities* in the matter of distribution of cars and equipment and *in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous.*"

**4—POWER AND DUTY OF INTERSTATE COMMERCE COMMISSION TO MAKE OUT OF PASSENGER AND FREIGHT STATION OF ONE INTERSTATE CARRIER A UNION STATION OR DEPOT.**

Attention is then directed to the fact that the Transportation Act provides not only for "*temporary* expropriation of terminals and main track of one railway to the common use of one or more other railways in an *emergency*" but it (the Transportation Act)

> "*also contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement*" (p. 343).

The Court then comments on the effect of the foregoing provisions as a "drastic limitation of a carrier's control and use of its own property in order to secure convenience and dispatch for the whole shipping and travelling public in interstate commerce" and expresses the following highly important conclusion on this subject (p. 344):

> "*It* (the Transportation Act) *gives to the Interstate Commerce Commission the power and duty where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.*"

As will be observed, the Commission has not merely the *power* but also the *duty* where the public interest requires, to order the establishment of a union station or depot under the circumstances stated.

**5—NEWLY BUILT DEPOTS ON LAND OF THIRD PARTIES.**

The Court then refers to an argument made by counsel for the Railroad Commission of California to the effect that the Interstate Commerce Commission's authority over union passenger depots would not extend to a new station to be constructed on the property of others than carriers and comments thereon as follows (p. 344):

> "This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions."

That would, indeed, be a ridiculous conclusion and one which apparently appealed to the Court's sense of humor. The result would be that in the very cases in which the magnitude of the undertaking and of the interests involved would seem most clearly to require jurisdiction on the part of the Interstate Commerce Commission, that Commission would be helpless, while in small cases in which an existing passenger station of one railroad could be converted into a union passenger station without requiring any additional land, the Federal Commission would have the author-

ity. Such a conclusion would be contrary to the entire spirit of the Transportation Act and to the practical necessities of the situation.

**6—PARAGRAPHS 18-21 OF SECTION 1.**

However, the Court did not find it necessary to pursue that subject, for the reason that it found that "means of control" over the installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission by Paragraphs 18 to 21, inclusive of Section 1 of the Act, as amended, referring to "extensions" and "abandonments" of lines of railroad (pp. 344-5).

The Court found that the "extensions" and "abandonments" incidental to the construction of a union passenger station in the Plaza Area in Los Angeles fall within the classes of "extensions" and "abandonments" over which the Interstate Commerce Commission has jurisdiction and concluded in the next to the last paragraph of its decision as follows (p. 348):

> "Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

**7—KIND OF LOCAL UNION STATION OVER WHICH STATE COMMISSION MIGHT RETAIN JURISDICTION.**

At page 345, the Court expresses its view with reference to the kind of local union station or terminal

over which a state commission might retain jurisdiction, as follows:

> "One might, too, readily conceive of a railroad crossing or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of *merely local union stations* or terminals *without extensions of main tracks and substantial capital outlay* should be regarded as an *ordinary exercise of the police power of the state* for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers."

But the Court hastens to point out that such a purely local situation would be far different from that presented in the Los Angeles case and in this connection says (p. 346):

> "But there is a great difference between such relocation of tracks or *local union stations and what is proposed here.* The differences are more than that of mere degree, they and their consequences are so marked as to constitute a *change in kind.*"

Such a situation, continues the Court, requires a "certificate of the Interstate Commerce Commission" (p. 346).

**8—PROVISO IN PARAGRAPH 17 OF SECTION 1.**

At page 346, the Court refers to the proviso in Paragraph 17 of Section 1 of the Act, as amended, reserving to the states the power "to require just and reasonable freight and passenger service for *intra-*

*state* business" except in so far as such requirement may be "inconsistent with any lawful order of the Commission made under the provisions of this Act."

It will be noted that the power reserved is as to *intrastate* business and that even as to that business the power must yield to an inconsistent lawful order of the Interstate Commerce Commission.

The Court refers to the proposed Los Angeles union passenger station as an "*interstate* union depot" (p. 338) to be constructed by "three great interstate railway systems in the largest city of our Western Coast" (p. 342) and it is quite evident to us that the Court was of the opinion that authority to direct the construction of such an interstate union passenger station had not been preserved to the states under said proviso but had become vested in the Interstate Commerce Commission.

**9—CERTIFICATES TO BE ISSUED BY INTERSTATE COMMERCE COMMISSION.**

This Court specified quite clearly the certificates to be issued by the Interstate Commerce Commission as follows:

> (a) Certificates that the public convenience, present or future, require the extensions and abandonments incidental to the Los Angeles union depot project (p. 344); and
>
> (b) A certificate (or finding) that the expense involved will not impair the ability of the carriers to perform their duty to the public (p. 347).

Such certificates were, in fact, issued by the Commission in its second decision (142 I. C. C. 489; Exhibit E to Petition for Writ, R. 146-7; Appendix No. 4 to this brief).

**10—THIS COURT'S CONCLUSION THAT COURSE TAKEN BY CITY OF LOS ANGELES IN FILING ITS FORMAL COMPLAINT WITH INTERSTATE COMMERCE COMMISSION WAS THE CORRECT ONE.**

In the concluding paragraphs of its decision, this Court said (pp. 347-8):

> "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the city of Los Angeles filed a petition with the Interstate Commerce Commission, asking *for an order to provide, maintain and use a union station,* that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.
>
> "For the reasons given, *we think that the course taken by the city of Los Angeles was the correct one.*"

It thus appears that this Court knew exactly the nature and character of the relief which the City of Los Angeles was asking in its case before the Interstate Commerce Commission, namely, *an order requiring the carriers to provide, maintain and use a union station.*

Clearly understanding the situation, the Court said

> *"that the course taken by the city of Los Angeles was the correct one."*

We respectfully submit that this Court *decided* the issue of the Interstate Commerce Commission's jurisdiction on the precise facts here under consideration and that under that decision the Interstate Commerce Commission has full authority to grant the relief requested by the City of Los Angeles.

This was also the view of the Court of Appeals of the District of Columbia. In the concluding paragraph of its decision, that Court said (R. 170):

> "The procedure adopted by the City of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles Case, where the court said: 'We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one.'"

(NOTE: In a subsequent portion of this brief, we shall address ourselves to the argument of counsel for the Interstate Commerce Commission that this Court, in its decision in the *Los Angeles Union Station Case,* hobbled the Interstate Commerce Commission by deciding that its only power in the premises is merely an "indirect and restrictive" power under which the Commission can simply sit by and *prevent* the consummation of a union depot plan which it may not consider to be in the public interest. Under this view, the Commission could do

nothing constructive in such matters. The Commission would simply have a veto power.

As we shall hereinafter show, we believe that this view is distinctly opposed to the New National Railroad Policy, fails to give effect to specific provisions of the Interstate Commerce Act as amended by the Transportation Act, 1920, and results from a failure to give effect to this Court's decision in the *Los Angeles Union Station Case.*)

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## V.

### INTERSTATE COMMERCE COMMISSION HAS JURISDICTION TO REQUIRE CONSTRUCTION AND OPERATION OF THE UNION PASSENGER STATION IN LOS ANGELES.

#### 1. ACTS INVOLVED IN CONSTRUCTION AND OPERATION OF UNION PASSENGER STATION AT PLAZA SITE IN LOS ANGELES.

The construction and operation of a union passenger terminal on the proposed site in the vicinity of the Plaza in Los Angeles would involve, among others, the following acts:

(a) *Extension* of existing main line railroad tracks to the site of the proposed new union passenger depot;

(b) *Abandonment* of certain existing passenger station facilities and also of the use by the Southern Pacific Company and the Salt Lake of the Southern Pacific's tracks on and along Alameda Street except only for industrial switching;

(c) *Joint use* of certain existing main line railroad tracks, for the purpose of securing access to and egress from the site; and

(d) *Selection* of the *site* and the *construction* of the *depot* thereon.

In the *Los Angeles Union Station Case,* 264 U. S. 331, this Court pointed out that an order for the construction and operation of a union passenger station in the Plaza Area in Los Angeles would necessarily involve *extensions, abandonments* and *joint users* of railroad properties falling within classes (a), (b) and (c) above specified. At page 340, the Court pointed out that such order would require the joint purchase of additional land for the location of the union passenger station, the abandonment of existing passenger depots, the abandonment, except for industrial switching, of the use of the Southern Pacific's tracks on Alameda Street, the joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe and the extension of main line tracks to the site of the proposed union passenger station.

The Court held that the Interstate Commerce Commission has jurisdiction over such *extensions, abandonments* and *joint users* and must issue the findings and certificates prescribed by the Interstate Commerce Act, as amended, before an *order requiring* the construction of the union passenger depot is made.

The Interstate Commerce Commission acted in accordance with said decision of this Court and issued all the necessary *findings* and *certificates.* As to these

three classes of acts, there is no issue here between the Interstate Commerce Commission and the City of Los Angeles.

What is there left? Only the selection of the site for the union passenger depot and the construction of the depot thereon.

The power to direct the construction of a union passenger depot has always been held to carry with it as a necessary incident thereto the power to specify the site thereof.

*Railroad Commission of Alabama v. Alabama Great Southern Ry. Co.*, 185 Ala. 354, 64 So. 13, 22;

*State v. St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491, 498;

*Gulf, Colorado & Santa Fe Ry. v. State* (Tex. Civ. App.), 167 S. W. 192, 195.

Hence the question at issue resolves itself into whether the Interstate Commerce Commission has the power to *require* the carriers to construct and operate a union passenger station on the site heretofore specified in the Interstate Commerce Commission's findings and certificates.

## 2. UNDER PARAGRAPH 3 OF SECTION 3 OF THE INTERSTATE COMMERCE ACT, AS AMENDED, THE INTERSTATE COMMERCE COMMISSION HAS JURISDICTION TO REQUIRE THE CONSTRUCTION AND OPERATION OF THE UNION PASSENGER STATION IN LOS ANGELES.

### a. Paragraph 3 of Section 3 covers the case of a union passenger station.

Paragraph 3 of Section 3 of the Act, as amended, provides, in part, that carriers shall

> "afford all reasonable, proper and equal *facilities* for the interchange of traffic between their respective lines and *for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith.* * * *"

Referring to this paragraph of the Act, this Court, in the *Los Angeles Union Station Case,* 264 U. S. 331, 343, said:

> "By Section 405 (of the Transportation Act, 1920) amended Section 3 of the Interstate Commerce Act provides in its third paragraph that all carriers shall afford all reasonable facilities for the interchange of traffic between their respective lines and for forwarding and delivering passengers."

We invite attention to the fact that under Paragraph 3 of Section 3 it is the duty of carriers to afford all reasonable, proper and equal

> *"facilities * * * for the receiving, forwarding and delivering of passengers * * * to and from their several lines and those connecting therewith.* * * *"

It seems too clear for argument that for the receiving, forwarding and delivering of passengers to and from the several lines of various carriers, no *facility* is more reasonable, convenient and appropriate than *a union passenger station.*

That the word "facilities" includes depots and union depots has been decided by the Interstate Commerce Commission and the courts.

*Hastings Commercial Club v. Chicago, M. & St. P. Ry. Co.,* 69 I. C. C. 489, decided July 10, 1922, was the first decision of the Interstate Commerce Commission construing Paragraph 3 of Section 3 of the Act as said paragraph had been amended by the Transportation Act, 1920. Commissioner Aitchison pointed out (p. 493) that in the matter of the use by one carrier of the terminal facilities of another carrier Congress had, by the Transportation Act, reversed the earlier policy and that the broader interest of the public in terminal properties had been recognized by the Transportation Act.

The Commission then defined the word "facilities" as used in Section 3 and said (p. 494):

> "The cases are numerous holding that *depots,* platforms, spur and side tracks, station grounds and elevators *are parts of railroad facilities. St. Louis & S. F. R. Co. v. Miller,* 31 Okl. 801; *State v. Missouri Pacific,* 29 Neb. 550; *Southern Pacific Company v. Railroad Commission,* 60 Ore. 406."

In *St. Louis & S. F. R. Co. v. Miller,* 31 Okl. 801, 123 Pac. 1047, cited by the Commission in the above

quotation, it was held that the word *"facilities"* as used in the Constitution of Oklahoma, includes a *railroad depot.*

In *Missouri, O. & G. Ry. Co. v. State,* 29 Okl. 640, 119 Pac. 117, the Corporation Commission of Oklahoma had made an order directing 3 railroad companies to construct and operate a union passenger depot in Durant, Oklahoma. The Constitution of Oklahoma provided that the Corporation Commission should have power to compel railroads to establish and maintain "such public service, *facilities* and conveniences as may be reasonable and just." The Supreme Court of Oklahoma held that the word "facilities" includes a *union passenger depot.*

The Interstate Commerce Commission itself, in its first decision of July 6, 1925, in the *Los Angeles Passenger Terminal Cases,* expressly assumed, and very properly so,

> *"that this provision* (i. e. Paragraph 3 of Section 3) *makes it the duty of carriers to maintain union-station facilities in a case where separate facilities would not be reasonable and proper."* (100 I. C. C. 421, 427.)

The same assumption underlies the Commission's second decision in the same case (142 I. C. C. 489).

If there had been any doubt on the question, that doubt would have been resolved conclusively by the decision of this Court in the *Los Angeles Union Depot Case,* 264 U. S. 331, in which case the Court decided that this same word "facilities" as used in the very

next paragraph of the Act (Paragraph 4 of Section 3) includes a "union station or depot". After referring to said Paragraph 4 and pointing out that it gives the Commission power to require the joint use of "terminal facilities" (p. 343), the Court said, relying on said words (p. 344):

> "It (said Paragraph 4) gives to the Interstate Commerce Commission the power and duty where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot."

The fact that the Court here found no difficulty in interpreting the word "facilities" so as to include a union passenger depot, is, in our opinion, a conclusive answer to the argument that if Congress had intended to give the Commission authority over the construction of passenger stations or union passenger stations Congress would have used those words specifically. This Court held that the specific use of these words is not necessary for the reason that Congress has used a broader term, namely, "facilities", which clearly includes not merely a passenger station of a single carrier, but also "a union station or depot".

We submit that there can be no reasonable doubt that the word "facilities" as used in Paragraph 3 of Section 3 of the Act includes a union passenger depot.

**b. Under Paragraph 3 of Section 3, it is the duty of carriers, in a proper case, to construct and operate a union passenger station.**

As we have already shown, the Commission itself took it for granted that under Paragraph 3 of Sec-

tion 3, it is the *duty* of carriers to maintain union station facilities in a case where separate facilities would not be reasonable and proper.

We have also shown that the Commission has issued all the necessary *findings* and *certificates* and has, in effect, twice decided the case in favor of the City on the *merits*.

Then why did not the Commission issue its affirmative *order* under Paragraph 3 of Section 3 *requiring* the construction of the union passenger depot as requested by the City?

To this question, the Commission has given two different answers, as follows:

1. In its first decision, the one of July 6, 1925, the Commission said, in effect, that while said Paragraph 3 of Section 3 prescribed certain *duties* to be performed by the carriers, including the duty in a proper case to construct a union passenger station, the Act has not given to the Commission *the power to enforce compliance by the carriers with the duties prescribed* by said paragraph; and

2. In its second decision, the one of May 8, 1928, the majority of the Commission said, in effect, that while perhaps it *does* have the power to enforce compliance with "little" duties specified in said Paragraph 3 of Section 3, it does not have the power to enforce compliance with "big" duties specified by the same paragraph.

We shall now consider each of these two positions, in turn.

**c. The Interstate Commerce Commission has power to enforce compliance with the duties prescribed by Paragraph 3 of Section 3, including the duty to construct and operate a union passenger station.**

The Commission's conclusion that it does not have power to compel compliance by the carriers with the *duties* prescribed by said Paragraph 3 of Section 3 was apparently based on *United States v. Pennsylvania R. R. Co.*, 242 U. S. 208. (See 100 I. C. C. 421, 427-8.) However, the Commission itself very fairly said of that case (p. 427):

> "The case arose before the Transportation Act, 1920, and does not involve any additions or changes in our jurisdiction made by that act."

The principal point in the case, being the matter on which the Commission quoted, was the proper construction to be given to the word "practices" in Section 15 of the Act. We have never claimed or suggested that our case comes under this word and have never in any way relied on it.

As the question now at issue has been decided under the Transportation Act, 1920, by this Court and other courts contrary to any possible adverse implication in *United States v. Pennsylvania R. R. Co.*, we shall not pause to give further consideration to the case.

We shall refer now, very briefly, to the decisions of the State Courts, the Interstate Commerce Commis-

sion itself and this Court under which we are convinced that the Interstate Commerce Commission has the power and authority, under said Paragraph 3 of Section 3 of the Act, to require the carriers, in a case such as ours, to construct and operate a union passenger station.

These decisions, we believe, show conclusively that the Interstate Commerce Commission has the *power* and authority to *compel* the *carriers,* in proper cases, to *perform* the *duties* specified in Paragraph 3 of Section 3 of the Act, including the duty to construct and maintain union passenger stations.

**(1) State Decisions.**

In *People ex rel. New York Central R. Co. v. Public Service Commission of New York,* 233 N. Y. 113, 119-121, 135 N. E. 195, 22 A. L. R. 1073, the Court of Appeals of New York decided that under the provisions of Paragraph 3 of Section 3 of the Act, as amended, the Interstate Commerce Commission has the exclusive authority to *require* carriers to construct connecting tracks for the interchange of traffic a portion of which is intrastate traffic.

On March 13, 1922, this Court (258 U. S. 621) denied a petition for a writ of *certiorari,* thus giving approval to the conclusion reached by the New York state courts on this question.

This decision, as well as the others to which we shall now refer, are directly at variance with the position taken by the Interstate Commerce Commission in its

first decision in the *Los Angeles Passenger Terminal Cases,* to the effect that the Commission does not have the power to require the performance by the carriers of the *duties* enumerated in said Paragraph 3 of Section 3 of the Act.

In *Lake Erie, A. & W. R. Co. v. Public Utilities Commission of Ohio,* 109 Ohio St. 103, 141 N. E. 847, the Supreme Court of Ohio reached the same conclusion on the subject of the Interstate Commerce Commission's authority to issue orders requiring the performance by carriers of the duties prescribed by said portion of Paragraph 3 of Section 3 of the Act.

The Supreme Court of California in *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, decided on December 19, 1922, held that the California Railroad Commission had lost its jurisdiction over the union passenger terminal situation in Los Angeles, and that by reason of the provisions of the Transportation Act of 1920, the jurisdiction to make an order requiring the construction and operation of the proposed union passenger station in Los Angeles is now vested exclusively in the Interstate Commerce Commission.

After reviewing various provisions of the Interstate Commerce Act, as amended, including not merely Paragraph 3 of Section 3, but also numerous other provisions of the Act, the court, at page 222, said:

> "The foregoing excerpts from among the many provisions of said amendatory act would seem to

fully justify the statement of Chief Justice Taft, above quoted from the Supreme Court of the United States, as to the radical departure effected by the said amendment to the Interstate Commerce Act in the direction of placing the entire control over the rates, properties, tracks, terminals and facilities of the railroads engaged in interstate commerce in and under the jurisdiction of the Interstate Commerce Commission."

After commenting at length on the case of *People ex rel. New York Central R. R. Co. v. Public Service Commission,* 233 N. Y. 113, 135 N. E. 195, and distinguishing the case of *Missouri etc. v. Larabee,* 211 U. S. 612, the court, at page 226, continued:

"It is clear from the foregoing that Congress has not only vested jurisdiction in the Interstate Commerce Commission over the question of the extension of terminal facilities, such as contemplated by the order of the Railroad Commission in the case at bar, but has also prohibited the railroads from making such improvements without the consent of the Interstate Commerce Commission. This being true, Congress has fully occupied the field of regulation of such matters and the power of the state commission has thereby been terminated."

Finally, the court concluded as follows (page 227):

"From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce Law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Inter-

> state Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject sought by it to be exercised in the several proceedings before it and by the order presented for review herein."

This decision was affirmed by this Court in the *Los Angeles Union Station Case* (264 U. S. 331).

The *Selma Station Case, North Carolina Corporation Commission v. Southern Railway Co.,* 185 N. C. 435, 117 S. E. 563, was relied upon and quoted from by the Interstate Commerce Commission in its first decision of July 6, 1925 (100 I. C. C. 421, 428-9). In that case, the North Carolina Corporation Commission brought mandamus against two railroad companies to compel the joint construction and operation by them of a passenger station at Selma, North Carolina. However, the case would seem clearly to be non-applicable for each of the following reasons:

(1) The court apparently conceded the correctness of the decision of the Supreme Court of California in *Atchison, T. & S. F. Ry. Co. v. Railroad Commission of California,* 190 Cal. 214, but expressly distinguished that case from the Selma case on the ground that the depot at Selma was primarily to serve *local, state* traffic (pp. 573-4). At page 573, the court said:

> "This station at Selma is necessary for the convenience of the people who use the Southern Railway for transportation from *point to point within the state* * * *"

Again, at page 574, the court said:

> *"The particular station involved,* as we have shown, *so far as it concerns the Southern Railway, is one which interstate travelers scarcely use."*
>
> (NOTE: The situation at Selma, accordingly, was radically different from that at Los Angeles, with its enormous volume of interstate passenger traffic over the lines of the three said carriers.)

(2) The court distinguished between a *station* and *station facilities* at a point such as Selma, which is *not* a *terminal,* and *terminals* and *terminal* facilities as to which the court conceded that the power and authority has gone to the Interstate Commerce Commission (pp. 578-9).

(3) The court relied on the fact that no order had as yet been made by the Interstate Commerce Commission. (Proviso in Paragraph 17 of Section 1 of the Act.) This point, of course, loses its effect *when the Interstate Commerce Commission acts.*

**(2) Decisions of Interstate Commerce Commission.**

The Interstate Commerce Commission has itself twice decided that it has power to compel compliance by the carriers with certain duties prescribed by said Paragraph 3 of Section 3 of the Act.

The first of these decisions was *Pittsburgh & West Virginia Ry. Co. v. Lake Erie, A. & W. Railroad,* 81 I. C. C. 333. This was a case of the construction of a track connection between lines of two railroads for

the purpose of facilitating the interchange of traffic between the same. The Commission said (p. 334):

> "In our opinion under that portion of Paragraph 3 of Section 3 of the Act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines *we have power* to deal with the issue here presented and *to make an affirmative order* in the premises if warranted by the record."

In other words, the Commission decided that it *has* the *authority* to *make* an *affirmative order requiring carriers to observe duties* specified in that portion of Paragraph 3 of Section 3 of the Act on which the City of Los Angeles relies.

The above decision was rendered *prior* to the Commission's first decision (July 6, 1925) in the *Los Angeles Passenger Terminal Cases* (100 I. C. C. 421).

Thereafter, on March 4, 1926, subsequent to the Commission's said first decision in the *Los Angeles Passenger Terminal Case,* but prior to its second decision therein, the Commission reached the same conclusion in *Chamber of Commerce, Breckenridge, Texas v. Wichita Falls, Ranger & Fort Worth R. Co.,* 109 I. C. C. 81. This was also a complaint under Paragraph 3 of Section 3 of the Act for the construction of connecting track between two lines of railroad.

At page 82, the Commission said:

> "The Ranger line and the Eastland, Wichita Falls & Gulf challenge our jurisdiction to grant

the relief prayed for. *Under* that portion of *paragraph* (3) *of section* 3 *of the act* which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, *we have the power to make an affirmative order* if warranted by the record. *Pittsburgh & West Virginia Ry. Co. v. L. E. A. & W. R. R.*, 81 I. C. C. 333."

The Interstate Commerce Commission has thus itself twice decided that it does have the power to *require* carriers to perform duties specified in Paragraph 3 of Section 3 of the Act.

**(3) U. S. Supreme Court Decisions.**

In addition to the *Los Angeles Union Station Case*, 264 U. S. 331, this Court has recently rendered another decision which has a direct bearing on the power and authority of the Interstate Commerce Commission to compel the carriers to comply with the duties specified by Paragraph 3 of Section 3 of the Act.

This decision was rendered subsequent to the Interstate Commerce Commission's first decision but prior to the Commission's second decision in the *Los Angeles Passenger Terminal Cases.* This decision is directly contrary to the view expressed by the Commission in its first decision to the effect that the Commission does not have power to require the carriers to comply with duties specified in said Paragraph 3 of Section 3 of the Act.

The case to which we refer is *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway*

*Company,* 271 U. S. 244, decided May 24, 1926. In this case, this Court said (p. 250):

> "In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in Paragraph 22, Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under Paragraph 3 of Section 3 to *require* the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co. v. Lake Erie, A. & W. R. Co.,* 81 Inters. Com. Rep. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's crossing, and in *Chamber of Commerce v. Wichita Falls, R. & Ft. W. R. Co.,* 109 Inters. Com. Rep. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co. v. Public Serv. Commission,* 233 N. Y. 113, 119-121, 22 A. L. R. 1073, 135 N. E. 195. Compare *Lake Erie, A. & W. R. Co. v. Public Utilities Commission,* 109 Ohio St. 103, 141 N. E. 847."

Whatever the implications in decisions prior to the Transportation Act, 1920, might have been, this Court here decided that the Interstate Commerce Commission has the power to *require* the carriers to comply with the *duties* specified by Paragraph 3 of Section 3 of the Act.

As the Commission had assumed in its first decision of July 6, 1925, that one of the duties thus specified is

> "the duty of carriers to maintain union station facilities in a case where separate facilities would not be reasonable and proper" (100 I. C. C. 421, 427),

and as the Commission had found in favor of the City on the *merits* of its case, the City looked forward quite confidently to receiving, finally, the order for which is prayed.

**d. The Interstate Commerce Commission's authority to require the performance by carriers of duties prescribed by Paragraph 3 of Section 3 extends to "big duties" as well as to "little duties".**

However, in its second decision of May 8, 1928, the Commission again held, in the *majority* opinion, that it does not have jurisdiction to issue this order.

The decision this time was not based on the proposition that the Commission does not have jurisdiction to compel compliance with the *duties* prescribed in Paragraph 3 of Section 3 of the Act. It may be assumed that the Commission yielded to the authority of the *Alabama & Vicksburg Railway Company* decision and for that reason did not restate or insist on its former point of view.

The decision on the jurisdictional question in the Commission's second decision was based on a different ground—namely, a distinction on the facts between a switch connection and a union passenger station. The following sentence is the only sentence which gives the reason for the opinion of the majority of the Commission in its second decision (Exh. E to Petition for Writ, R. 139):

> "The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case, is obvious." (142 I. C. C. 489, 497.)

That is all. That was the view of the majority of the Commission.

Three commissioners held that the Commission has the authority urged by the City and should issue the order requested by the City. We can not do better than to quote from the opinion of Commissioner Eastman, which was concurred in by Commissioners Lewis and McManamy (142 I. C. C. 489, 500):

> "However, since our previous decision in this case, we have ourselves decided in *Pittsburgh & West Virginia Ry. Co. v. L. E., A. & W. R. R.*, 81 I. C. C. 333, and in *Breckenridge Chamber of Commerce v. W. F., R. & F. W. R. R. Co.*, 109 I. C. C. 81, that we have the power to enforce by affirmative order the provisions of paragraph (3) of section 3, and the Supreme Court has referred with approval to these cases in *Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co.*, 271 U. S. 244. They (said decisions) related to the establishment of switch connections, and the majority here distinguish them by saying that the 'distinction between a simple switch connection such as was contemplated by cases previously referred to, and the elaborate facilities sought to, be required by us in the present case is obvious. The logic of this is not clear. In our previous decision we held, upon authority of the Supreme Court decision in the *Tank Car Case*, that power to enforce paragraph (3) of section 3 is in the courts rather than in us. It now appears that so far, at least, as that paragraph requires switch connections, we can enforce it. But if we can enforce it in one of its aspects, why not in all? There is nothing in the paragraph which distinguishes between *little duties* and *big duties*, or gives us power to enforce the one and not the other. Inasmuch as the Supreme Court has inti-

> mated that we can enforce paragraph (3) in one respect, it follows necessarily, it seems to me, that we can enforce it in all respects." (Exh. E to Petition for Writ, R. 143-4.)

In other words, the issue between the Commission and the City as to Paragraph 3 of Section 3 may be stated, in a nutshell, as follows:

The Commission concedes that our case comes within the language of Paragraph 3 of Section 3. The Commission now concedes also that it has the power to compel compliance with certain duties specified by Paragraph 3. The majority of the Commission, however, now draws a distinction between *big duties* and *little duties,* holding that the Commission can compel compliance with *little duties* under said paragraph but not with *big duties,* such as the duty to establish and maintain a union passenger station.

None of the decisions bearing on Paragraph 3 of Section 3 make or suggest this distinction.

Section 12 of the Act, in providing that

> "the Commission is hereby authorized and required to execute and enforce the provisions of this Act"

makes no distinction between enforcing "big duties" and "little duties".

The language of Paragraph 3 of Section 3 is general in character. The paragraph refers in general terms to "facilities * * * for the receiving, forwarding and delivering of passengers * * * from their respective lines and those connecting therewith * * *." No attempt is made to restrict "facilities"

to certain classes of facilities, such as those costing not over a specified sum of money, and to exclude other classes, such as facilities costing a larger sum of money.

As this Court said in *United States v. Hartwell*, 6 Wall. (Vol. 73) 385, 396:

> "When the words are general and include various classes of persons, there is no authority which would justify the court in restricting them to one class and excluding others, where the purpose of the statute is alike applicable to all."

While it may be conceded that jurisdiction over the construction and operation of union passenger depots will involve the enforcement of a "big duty" as distinguished from a "little duty" and will add to the Commission's work, we respectfully submit that these considerations should not weigh against the exercise of this jurisdiction by the Commission if, in fact, the Congress has conferred the jurisdiction upon the Commission. Substituting the Commission for the Supreme Court, we believe that the following words of Chief Justice Marshall in the famous case of *Cohens v. Virginia*, 6 Wheat. 264, are applicable (p. 404):

> "We (the Supreme Court) have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given * * *. Questions may accrue which we would gladly avoid, but we can not avoid them. All we can do, is to exercise our best judgment, and conscientiously to perform our duty."

This was also the view of the Court of Appeals of the District. After quoting Paragraph 3 of Section 3 of the Act, the Court said (R. 168-9):

> "This section, we think, vests the Interstate Commerce Commission with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines. The term 'reasonable, proper, and equal facilities' is broad and comprehensive enough to include not only trackage but adequate station facilities."

**e. Conclusion as to Paragraph 3 of Section 3.**

As already shown, this Court has decided that the Interstate Commerce Commission *has* jurisdiction to enforce duties prescribed by Paragraph 3 of Section 3 of the Act.

One of the duties so prescribed is the duty, in a proper case, to construct and operate a union passenger station.

The final ground then relied on by the majority of the Commission, namely, a distinction between "big duties" and "little duties" under said Paragraph 3 of Section 3, appears to be contrary to the authorities and without merit.

Hence we submit, very respectfully, that by virtue of the provisions of Paragraph 3 of Section 3 of the Act, the Commission has the jurisdiction which the City of Los Angeles asks it to exercise.

### 3. UNDER PARAGRAPH 4 OF SECTION 3 OF THE INTERSTATE COMMERCE ACT, AS AMENDED, ALSO, THE INTERSTATE COMMERCE COMMISSION HAS JURISDICTION TO REQUIRE THE CONSTRUCTION AND OPERATION OF THE UNION PASSENGER STATION IN LOS ANGELES.

#### a. Paragraph 4 of Section 3.

We now invite the Court's attention to another paragraph of the Interstate Commerce Act, as amended, on which we also rely.

This is Paragraph 4 of Section 3 of the Act, which paragraph was added in 1920. This paragraph confers upon the Interstate Commerce Commission the power and authority, under the circumstances therein specified, to *require* the *use* of *terminal facilities,* of one carrier by another carrier or carriers.

This paragraph reads, in part, as follows:

> "If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced."

**b. This Court decided in the Los Angeles Union Station Case that under Paragraph 4 of Section 3, the Interstate Commerce Commission has authority to require the construction and operation of a union passenger station, where the terminal facilities are already owned by one of the carriers.**

Referring to Paragraph 4 of Section 3 of the Act, this Court in the *Los Angeles Union Station Case*, 264 U. S. 331, said (p. 343):

> "It (Paragraph 4) not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, *but it also contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement.*"

The Court then comments on the effect of this legislation, as follows (pp. 343-4):

> "This is a drastic limitation on a carrier's control and use of its own property in order to secure convenience and dispatch for the whole shipping and traveling public in interstate commerce."

Then comes the following significant conclusion showing that the language of Paragraph 4 includes the case of a union passenger station (p. 344):

> "*It* (Paragraph 4) *gives to the Interstate Commerce Commission the power and duty, when the public interest requires, to make out of what is the passenger and freight station of one interstate carrier a union station or depot.*"

Here, then, is a direct decision by this Court that the Interstate Commerce Commission has the power to

require carriers to establish a union station or depot *where the terminal property is already in railroad ownership* and that it is the *duty* of the Commission to do so where the public interest requires.

**c. The carriers now already own most of the lands and tracks needed for the Los Angeles union passenger station. Hence, under the decision of this Court in the Los Angeles Union Station Case, the Interstate Commerce Commission has authority under Paragraph 4 of Section 3 of the Act, to require the construction and operation of the Los Angeles union passenger station.**

In the *Los Angeles Union Station Case,* this Court assumed, as was then (April 7, 1924) the case, that the land in the Plaza Area in Los Angeles where the proposed union passenger station is to be constructed was the property of *third persons* and did not pursue the subject further because the Court found in other sections of the Act sufficient means of control by the Interstate Commerce Commission (pp. 344-5).

*However, the situation has now changed by reason of the fact that, subsequent to the date of said decision, the Southern Pacific Company has acquired the ownership of most of the lands involved in the proposed Plaza site location.*

The facts as they now exist are set forth in Paragraph XVIII of the Petition for the Writ herein (R. 25-6).

Said Paragraph XVIII alleges as follows:

"That the carrying into effect of the union passenger depot order requested by the city of Los

Angeles, as aforesaid, would require to a substantial extent the joint use of existing railroad terminal facilities in or adjacent to the city of Los Angeles, including the following uses—the use by the Southern Pacific passenger trains from the north, of the Santa Fe main line tracks on the west bank of the Los Angeles river from a point north of the North Broadway Viaduct as far south as Aliso Street; the use by the Salt Lake passenger trains from Pasadena of the Santa Fe's tracks on the west bank of the river between the same points; the use by the Salt Lake passenger trains from the south of the Santa Fe's tracks from Hobart Junction on the south to the site of the proposed union passenger depot on the north, a total distance of approximately 3 miles; and the use by the Southern Pacific of the Salt Lake tracks on the east bank of the Los Angeles river from Alhambra Avenue southerly to Butte Street and thence west over the Salt Lake's Butte Street line to Alameda Street.

"That the site for the proposed union passenger station itself, within said Plaza Area, as said site is shown on said California Railroad Commission's Exhibit 4-b, consists of a total area of 36 acres, of which area 26.87 acres, being more than two-thirds of the total area, is already railroad terminal land owned by the Southern Pacific and to a small extent by the Santa Fe; that the Southern Pacific's portion of said land, being all except a small portion owned by the Santa Fe, was acquired by the Southern Pacific after the Supreme Court of the United States had rendered its said decision of April 7, 1924; that the railroad terminal land already so owned by said carriers includes the entire land on which the head house of the proposed union passenger station is to be located and almost all the land on which the station tracks are to be constructed; that the land

remaining in private ownership is only a small part required for station trackage together with some land west of Alameda Street desired for an appropriate approach to the head house, and is only land needed to 'round out' the project.

"That of the railroad terminal properties which would be jointly used in connection with the union passenger depot plan as to which the city of Los Angeles has requested said order, the entire trackage along the Los Angeles River and nearly all the land on which the union station structures are to be erected are already in the ownership of the Southern Pacific, the Santa Fe and the Salt Lake, respectively; that the joint use of said terminal facilities in connection with and as a part of said union passenger depot project would be in the public interest and would be practicable and would not substantially impair the ability of the carrier owning or entitled to the enjoyment of the same to handle its own business."

As will be noted, said Paragraph XVIII shows that of the railroad terminal properties which would be jointly used in connection with the union passenger depot plan, the entire trackage along the Los Angeles River and nearly all the land on which the union station structures are to be erected are already in the ownership of the Southern Pacific, the Santa Fe and the Salt Lake, respectively. The remaining land in private ownership is only a small part required for station trackage and for an appropriate approach to the head house, and is only land needed to "round out" the project.

That the appropriate public authority would have the right to direct the carriers to acquire, by eminent domain, if necessary, the additional land thus needed to "round out" the project, is well established. The following decisions hold that the fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

*Railroad Commission of Alabama v. Northern Alabama Ry. Co.*, 182 Ala. 357, 62 So. 749;

*Railroad Commission of Alabama v. Alabama Great Southern Ry. Co.*, 185 Ala. 354, 361, 64 So. 13, 15, 16;

*Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co.*, 109 Mass. 103;

*Dewey v. Atlantic Coast Line*, 142 N. C. 392, 55 S. E. 292;

*State v. St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

On this point, see also

*Wisconsin, Minnesota and Pacific Railroad v. Jacobson*, 179 U. S. 287, 302, 45 L. Ed. 194, 201.

On the above facts, which are admitted by the answer, and on the decisions of the courts above referred to, we respectfully submit that the City of Los Angeles now has a clear case for action by the Interstate Com-

merce Commission under Paragraph 4 of Section 3 of the Act in addition to our rights under Paragraph 3 of the same Section.

The Court of Appeals of the District held that on the facts as they now exist the Interstate Commerce Commission has authority under Paragraph 4 as well as Paragraph 3 of Section 3 of the Act to make the *order* prayed for by the City of Los Angeles. On this point, the court said (R. 168):

> "We come now to the conceded facts as set forth in paragraph XVIII of the petition. The railroad terminal properties and trackage which would be used in carrying out the union depot plan, including the entire trackage along the Los Angeles river and nearly all of the land on which the union station is to be erected, are now owned by the three carriers here involved. The small portion of land still in private ownership is needed only for a proper approach to the main depot and for properly completing the project as planned. This land could be acquired, of course, by the carriers, either by purchase or by eminent domain under the direction of the appropriate public authority.
>
> "It thus appears that the whole project is such that under the Act it has been removed from the jurisdiction of the State Commission and placed within the jurisdiction of the Interstate Commerce Commission. If, in carrying out the project, necessity arises for the state to exercise its police power in the matter of protecting street crossings, etc., it would be merely incidental to the general scheme,—cooperative with and not hostile to the jurisdiction of the Interstate Commerce Commission.

> "The broad power conferred upon the Interstate Commerce Commission is set forth in paragraphs 3 and 4 of section 405 of the Act. Paragraph 4 empowers the Commission to regulate the terminal facilities of converging carriers to the extent of requiring an interchange of trackage by the different lines to facilitate the better operation and handling of freight and passengers."

After quoting Paragraph 3, the court concluded (R. 168-9):

> "This section, we think, vests the Interstate Commerce Commission with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines. The term 'reasonable, proper, and equal facilities' is broad and comprehensive enough to include not only trackage but adequate station facilities."

While we have thus referred to the situation under Paragraph 4 of Section 3 of the Act, we ask the Court to bear in mind our conviction that under the preceding paragraph, namely, Paragraph 3, the Commission has full power and authority to require the construction of a union passenger station where, as here, the public interest requires such construction, entirely irrespective of whether the lands in the proposed station site are or are not already in railroad ownership.

## VI.

### OPPOSING ARGUMENTS OF INTERSTATE COMMERCE COMMISSION ANSWERED.

The brief of the Interstate Commerce Commission on file herein devotes itself to a single point with various sub-heads—a question of statutory construction—namely, does the Interstate Commerce Act, as amended by the Transportation Act, 1920 (41 Stat. 456), confer upon the Interstate Commerce Commission authority to make the order prayed for by the City of Los Angeles?

Conceding that Congress has authority to clothe the Commission with full power in the field of union passenger stations (Brief of Interstate Commerce Commission, p. 53), the only question argued in said brief is whether, in fact, Congress has conferred this authority upon the Commission.

No question of *merits* on the *facts* is here involved. Those questions have already all been decided in favor of the City of Los Angeles when the Commission made its *findings of fact* and issued its *certificates*.

As has already been noted, among the findings made by the Commission was the finding that the union station project advocated by the City of Los Angeles is "in the public interest".

The only remaining question is one of *law* as to the Commission's jurisdiction to make the *order* requested by the City of Los Angeles.

Counsel for the Commission has grouped his arguments under four principal points, each of which we shall now consider.

1. **ARGUMENT OF COMMISSION'S BRIEF THAT THE INTERSTATE COMMERCE ACT FAILS TO EMPOWER THE COMMISSION TO ORDER THE CONSTRUCTION OF UNION PASSENGER STATIONS FAILS TO GIVE EFFECT TO BOTH PARAGRAPHS 3 AND 4 OF SECTION 3 OF THE ACT, AS AMENDED BY THE TRANSPORTATION ACT, 1920.**

a. **The provisions of both Paragraphs 3 and 4 of Section 3 include union passenger stations.**

At pages 20 to 27 of its brief, the Commission urges that the Interstate Commerce Act does not contain any provision authorizing the Commission to order the construction of union passenger stations.

As we have already pointed out (The Law, V), it is quite clear from the decisions of this Court, of various state courts and of the Interstate Commerce Commission itself that the word "facilities" as used in Paragraph 3 of Section 3 of the Act and the words "terminal facilities" as used in Paragraph 4 of the same section, include union passenger stations.

At page 27 of its brief, the Commission, in effect, asks why if we are correct in our reliance on said Paragraph 3, did not the Commission make orders for the construction and operation of union passenger stations prior to the enactment of the Transportation Act, 1920. The answer is simple. Prior to 1920,

this paragraph, which was then numbered 2, contained this limiting and restrictive language:

> *"but this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."*

As it is almost impossible to imagine a union passenger station which does not, at least to some extent, involve the use by one carrier of the tracks or other terminal facilities of another carrier, the Commission, as a practical matter, was without authority, prior to 1920, to direct the construction of union passenger stations.

However, in 1920, the Transportation Act struck the above-quoted limiting and restrictive words from said paragraph and thus this obstacle was removed.

**b. Interstate Commerce Commission has authority to enforce by order both Paragraphs 3 and 4 of Section 3 of the Act, in cases of union passenger stations.**

**(1) Paragraph 3 of Section 3.**

At page 23 and following pages of his brief, counsel for the Commission urges that, in any event, the Interstate Commerce Act has not conferred on the Commission the power to enforce the *duties* prescribed by said paragraph. In this connection, counsel refers to *United States v. Pennsylvania R. R. Co.,* 242 U. S. 208.

This was the ground, as hereinbefore pointed out, on which the Commission, in its first decision, rested

its refusal to consider the evidence bearing on the City's request for the *order requiring* the construction and operation of a union passenger station. However, as has also been shown, this Court thereafter, in *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway Company,* 271 U. S. 244, decided that the Commission does have the power and authority to *require* the performance of the *duties* specified in Paragraph 3 of Section 3 of the Act. Hence, in its second decision, the Commission, apparently acknowledging the force and effect of this Court's decision, withdrew from its former position and rested its decision on a distinction between "big duties" and "little duties" under that paragraph.

The case of *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.,* 37 Fed. 567, cited by counsel on page 28 of his brief, was decided in 1889, more than thirty years prior to the changes made by the Transportation Act, 1920, and is of little value in the solution of our present problem.

At pages 29 and 35 of its brief, the Commission quotes from this Court's decision in *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway Company,* 271 U. S. 244, but we do not find quoted the concluding portion of the decision, on which we rely (p. 250):

> "In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in paragraph 22, Congress has vested in the Commission the authority to find the facts and thereon

to exercise the necessary judgment. The Commission's power under paragraph 3 of section 3 to *require* the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co. v. Lake Erie, A. & W. R. Co.,* 81 Inters. Com. Rep. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's crossing, and in *Chamber of Commerce v. Wichita Falls, R. & Ft. W. R. Co.,* 109 Inters. Com. Rep. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co. v. Public Serv. Commission,* 233 N. Y. 113, 119-121, 22 A. L. R. 1073, 135 N. E. 195. Compare *Lake Erie, A. & W. R. Co. v. Public Utilities Commission,* 109 Ohio St. 103, 141 N. E. 847."

The Court is respectfully referred to The Law, V, 2, c, of this brief, where the matter of the Commission's authority under Paragraph 3 of Section 3 of the Act is fully covered. We believe that we have there shown quite conclusively that, subsequent to the enactment of the Transportation Act, 1920, the Commission has had and now has the power and authority to enforce compliance with the *duties,* both "big" and "little" prescribed by Paragraph 3 of Section 3 of the Act.

**(2) Paragraph 4 of Section 3.**

Turning now to Paragraph 4 of Section 3 of the Act, the Commission has not claimed any impotency on its part, nor do we understand how, in view of the specific language of the paragraph and also in view of this Court's decision in the *Los Angeles Union*

*Station Case,* 264 U. S. 331, 343, 344, such claim could reasonably have been made.

**c. Relative Scope of Paragraphs 3 and 4 of Section 3.**

At page 34 of its brief, the Commission refers to "the proper interpretation of those paragraphs (Paragraphs 3 and 4 of Section 3) as construed together."

Under Paragraph 3, it is the duty of carriers, among other matters, to "afford all reasonable, proper, and equal facilities for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith".

That duty exists entirely irrespective of whether the *land* on which the facility is to be constructed is already owned by one or more of the carriers or whether it is owned by a third party. If it is owned by a third party, then, as we have already shown, the carriers affected, if they can not acquire the same by agreement with the owner, may avail themselves of the power of eminent domain.

However, the land to be jointly used in connection with such facility might already be owned by one or more of the carriers affected, in which event the owning carrier or carriers would, of course, be entitled to compensation to be paid by the other carrier or carriers. In that event, the very interesting question would arise as to how this compensation was to be ascertained in the event that the carriers affected might be unable to agree as to the amount thereof.

Resort to the courts in the exercise of the power of eminent domain would be open. However, the Congress determined that, in that event, it would be desirable to provide an alternative machinery for the ascertainment of such compensation. The Interstate Commerce Commission would already have jurisdiction, in many important respects, over the carrier property to be thus jointly used. By reason of the Commission's knowledge of the situation and its expert training and personnel, Congress decided that it would be wise to provide, as an alternative method of ascertaining said compensation, that the Interstate Commerce Commission, in the event of a failure of the carriers to agree, might fix a just and reasonable compensation to be paid for the use of said property, "to be ascertained on the principle controlling compensation in condemnation proceedings". It was specifically provided, however, that the resort of the owning carrier or carriers to the courts for the ascertainment of the just damages or compensation should be preserved.

It was because of this situation, going to the question of the determination of the compensation to be paid in case the property on which the facility was to be constructed and/or used was already in carrier ownership, that Congress, when it enacted the Transportation Act, 1920, added to Section 3 of the Interstate Commerce Act said Paragraph 4.

It is interesting to note that this is not the first time that a legislative body has provided that the com-

pensation to be paid for the taking of the property of a common carrier or other public utility may, as an alternative method available to the taker, be fixed and determined by the tribunal which, in many other important respects, already has jurisdiction over such property. The Constitution and Statutes of California contain such provisions. (Constitution of California, Article XII, Section 23a; Public Utilities Act of California, St. 1915, Chap. 91, p. 115, Sec. 47(b); *Marin Municipal Water District v. Marin Water & Power Company,* 178 Cal. 308; *East Bay Municipal Utility District v. Railroad Commission of California,* 194 Cal. 603.)

Hence, it would appear quite clearly that Paragraph 3 and Paragraph 4 of Section 3 were each enacted to cover a particular situation in which the Congress found that need for regulation existed and that neither of these paragraphs is in any way inconsistent with or exclusive of the other.

**d. Comments of Chairman Esch.**

In a footnote to pages 31 and 32 of its brief, the Commission refers, in support of an argument that Congress did not in 1920 intend "to encroach on State authority" (Brief of Interstate Commerce Commission, p. 33) in the matter of union passenger stations, to a statement made by Chairman Esch of the House Committee during the pendency of the Esch-Cummins Bill before the House of Representatives.

However, it seems to us quite clear that this statement does not support the Commission's contention, but, on the other hand, supports the distinction made by this Court in the *Los Angeles Union Station Case,* 264 U. S. 331, 345, between "merely local union stations or terminals" as to which the states may have retained jurisdiction pending an inconsistent lawful order of the Interstate Commerce Commission, and a union passenger station to be constructed and operated by "three great interstate railway systems in the largest city of our western coast" (p. 342). On that distinction, we rely.

Thus, Chairman Esch, in referring to depots and joint use of depots, said (Brief of Interstate Commerce Commission, page 31):

> "In such *small matters,* the *detail* should be left within the jurisdiction of the State authorities, who know the conditions, and know how best to meet the needs."

Again, a little further:

> "Due to the prohibitive cost of land, it is necessary to get a greater use out of existing terminals by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals, but that that power should be exercised as to *depots in small communities* is not contemplated. That power should be left, as we leave it, to the regulatory bodies of the several States."

We submit that Chairman Esch in referring to the "small matters" and to the "depots in small com-

munities", had in mind the precise distinction which was made by this Court in the *Los Angeles Union Station Case,* supra, and that his statement supports our view of the case and not that of the Commission in a situation such as that now before this Court involving, as this Court has said, the construction "of an *interstate* union depot in the City of Los Angeles" (p. 338).

**2. ARGUMENT OF COMMISSION'S BRIEF AS TO DECISION OF THIS COURT IN LOS ANGELES UNION STATION CASE FAILS TO GIVE EFFECT TO THOSE PORTIONS OF DECISION WHICH DECLARE COMMISSION'S MANDATORY POWER AS TO UNION PASSENGER STATIONS.**

On pages 37 to 48 of his brief, counsel for the Commission presents an argument to the effect that this Court, in deciding the *Los Angeles Union Station Case,* held that the Interstate Commerce Commission is not empowered to require the construction of union passenger stations.

Counsel argues that the effect of said decision is to hold that the Commission has merely an "indirect and restrictive" and a "preventive" "means of control" over the construction of union passenger stations even by great interstate railway systems in the largest cities of the country. By the use of these words, many times repeated, counsel has apparently firmly convinced himself of the correctness of his view.

Counsel's position is thus stated (Brief of Interstate Commerce Commission, p. 19):

> "By reason of its power to grant or withhold permission for the incidental rearrangement of main line track, the Commission is now possessed of an *indirect means of control* over the establishment of union stations whereby it may *prevent* the same if it considers that it would result detrimentally to the interests of interstate commerce. But the effect of the exercise of that *indirect and restrictive means of control* would merely be *to preserve the existing status* of the railroads and cities affected."

We believe that counsel has overlooked the fact that after this Court had carefully analyzed the situation as to the first *two* steps in the problem, namely, the Commission's *findings of fact* and its *certificates,* the Court addressed itself to the *third* and final step, namely, the *order,* and said (pp. 347-8):

> "We were advised by statements at the bar after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an *order* to provide, maintain and use a union station, that a hearing followed and that, pending the decision of this Court, the matter is held under consideration.
>
> *"For the reasons given, we think the course taken by the City of Los Angeles was the correct one."*

The City of Los Angeles has continued to follow that course, steadfastly, ever since.

We respectfully submit that counsel has misunderstood and failed to give effect to this Court's decision and that, when properly understood, the decision holds

that the Commission has power to require the construction of union passenger stations, in proper cases, both when the land is already owned by the carrier or carriers (Paragraphs 3 and 4 of Section 3) and where the land is still owned by third parties (Paragraph 3 of Section 3).

**a. Paragraph 3 of Section 3.**

As we read the decision, this Court does three things, as follows:

(1) Decides that the Supreme Court of California was correct when it held that the California Railroad Commission no longer has power to require railroads to build an interstate union depot in the City of Los Angeles, for the reason that the subject matter has been committed to the Interstate Commerce Commission by the Transportation Act of 1920 (264 U. S. 331, 338, 341, 348);

(2) Analyzes the provisions of the Interstate Commerce Act in so far as they bear on *findings* to be made and *certificates* to be issued by the Interstate Commerce Commission as conditions precedent to an *order* for the construction of a union passenger depot (264 U. S. 331, 342-8); and

(3) Holds that the City of Los Angeles pursued the correct course when it filed its petition with the Interstate Commerce Commission asking for an *order* for the construction, maintenance and use of a union passenger station (264 U. S. 331, 347-8).

We do not believe that this Court would have stated that the course taken by the City of Los Angeles was the correct one if the Interstate Commerce Commission was, in fact, without jurisdiction to make the very *order* for which the City was petitioning and to which the Court was referring.

Counsel for the Commission has referred in his brief to the first two of the above three matters but has apparently failed to grasp the significance of the third.

This is one of the many instances in which a state or federal commission is required, under the law, to make its *findings of fact* and to issue certain *certificates* as preliminary to the making of an *order* directing or requiring that an act be done. So here, the final *order* directing and requiring the construction and use of a union passenger station can not be made until after the Commission has first made the requisite *findings* and issued the necessary *certificates.* Hence it was entirely natural for this Court to analyze first the requirements of the Interstate Commerce Act with reference to findings and certificates before addressing itself to the final step to be taken by the Commission, which is an *order,* based on said *findings* and *certificates.* After having made such analysis, this Court, in the concluding paragraphs of its decision said (264 U. S. 331, 347-8):

> "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles

filed a petition with the Interstate Commerce Commission asking for an *order* to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

"For the reasons given, *we think the course taken by the City of Los Angeles was the correct one.*"

The Court then adds, quite naturally and in entire harmony with its earlier analysis, that until the Commission has acted under Paragraphs 18 to 21 of Section 402 of the Transportation Act (referring to its *findings* and *certificates*) the carriers can not be *required* to provide a new interstate union station and to extend their tracks thereto. The things to be done are then identified as being the things which the State Railroad Commission has ordered the carriers to do.

Knowing exactly the nature and character of the relief which the City of Los Angeles was asking in its case before the Interstate Commerce Commission, namely, an *order requiring* the carriers to provide, maintain and use a union station, this Court held that the course taken by the City of Los Angeles in filing its petition with the Interstate Commerce Commission was the correct one.

At page 44 of his brief, counsel says that the character of *order* referred to by this Court was "merely its permissive *order* or *certificate* under said Paragraphs (18) to (21) granting authority for the rearrangement of main-line track that would be incidental to the establishment of union stations".

In this statement, we believe that we find the reason for what we believe to be counsel's failure to understand this Court's decision. In this statement, counsel shows (1) that he is mistaken as to the *fact* of the character of the order for which the City had asked and (2) that he is apparently of the view that an *order* and *a certificate* are one and the same thing and that there is no distinction between them.

Referring first to counsel's error on the question of fact, the City did not ask for any merely "permissive order".

The City of Los Angeles asked for an order *directing* and *requiring* that acts be done, including, among others, an order "commanding" said defendants (namely, the carriers) * * * "to construct and thereafter operate and use a union passenger depot and appurtenances on a site located within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, and to acquire such land, if any, as may be necessary for said purpose" (R. 46).

The City's prayer for relief appears on pages 45 and 46 of the printed record herein and we respectfully ask the Court to refer to the same. The Court will find that the prayer was for an *order commanding* the defendant carriers to take action. It was in no sense, as stated by counsel for the Commission, "merely a permissive order" (Brief of Interstate Commerce Commission, p. 44).

Referring next to counsel's confusion in the use of the words "order or certificate" (which are quite different matters), it may be well to bear in mind the distinction between three different terms, which this Court used with precise accuracy in its decision in the *Los Angeles Union Station Case,* as follows:

(1) *Findings.*

These are findings of fact made by the Commission and do not have the effect of an order. They are merely preliminary to an order. For the findings made by the Commission in the *Los Angeles Passenger Terminal Cases,* see the printed record herein at pages 87-8 and 139-40 and compare the findings made by the California Railroad Commission at pages 147-9.

(2) *Certificates.*

These are formal certifications which are set out by the Commission separately and formally, following its opinion. They, likewise, do not direct or require that anything be done and do not have the force of an order. See the printed record pages 146-7 for the certificates issued by the Commission in its second decision in the *Los Angeles Passenger Terminal Cases.*

(3) *Order.*

This is a direction to do or refrain from doing some act. Where, as here, it is necessary for the Commission first to make findings of facts and issue certificates, the order follows the opinion and the certificates.

The Court used each of the above three terms with great care and in the same sense in which they are used in the Interstate Commerce Act. The Court first referred to and analyzed the provisions of the Act bearing on the Commission's *findings* and *certificates.* Turning then to the final step, which is the *order,* the Court held, as we have already pointed out, that the City of Los Angeles followed the correct course when it filed with the Interstate Commerce Commission its petition asking for an *order* to provide, maintain and use the union station.

The Court thoroughly understood the situation and, so understanding it, decided that the course taken by the City in asking for such order was the correct one. In so holding, we believe that this Court decided the issue of the Interstate Commerce Commission's jurisdiction on the precise facts here under consideration.

**b. Paragraph 4 of Section 3.**

As already shown, this Court, in the *Los Angeles Union Station Case,* directly held that in cases falling within Paragraph 4 of Section 3 of the Act, the Interstate Commerce Commission has not merely the *power* but also the *duty,* where the public interest requires, to direct the construction and/or use of a union station or depot (264 U. S. 331, 344). It is true that at the time when said decision was rendered (April 7, 1924) this Court was of the opinion that said Paragraph 4 of Section 3 was inapplicable to the facts of the Los Angeles Union Passenger Station situation

for the reason that at that time most of the land which would be needed for the union passenger station site was still in the ownership of third parties. However, subsequent to that decision, those lands were acquired by the Southern Pacific Company from the El Paso & Southwestern Railroad Company which had acquired the same for its proposed terminal in the City of Los Angeles (R. 76—Footnote) and said lands, together with another portion of the site over which the Santa Fe now owns and operates its main line passenger tracks, are now owned by the carriers.

Hence, we believe that on the facts as they now exist this Court would have held that the Interstate Commerce Commission has jurisdiction under the provisions of Paragraph 4 of Section 3 as well as Paragraph 3 of Section 3 of the Act.

As we have already shown, the Court of Appeals understood this Court's decision in the *Los Angeles Union Station Case* as we have always understood it. The concluding paragraph of the court's decision reads as follows (R. 170):

> "The procedure adopted by the City of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles Case, where the court said: 'We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed

a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one.' "

### 3. ARGUMENT OF COMMISSION'S BRIEF THAT THE CONGRESSSIONAL PLAN WAS TO GIVE TO INTERSTATE COMMERCE COMMISSION ONLY INDIRECT AND RESTRICTIVE POWERS AS TO UNION PASSENGER STATIONS IS UNSOUND.

At pages 48 to 55 of his brief, counsel for the Commission next makes the argument that in entering into a new field it is the Congressional Plan to proceed cautiously and haltingly and to confer on the Commission at first only indirect and restrictive powers.

It is, of course, true that certain powers conferred on the Commission by the Transportation Act, 1920, were only permissive. This is the case as to the consolidation provisions (*Snyder v. New York, C. & St. L. R. Co.*, 118 Ohio St. 42, 160 N. E. 615) and the issue of securities.

But it by no means follows from these two instances that everything else which Congress did when it enacted the Transportation Act, 1920, was done cautiously, haltingly or limpingly. We had been of the impression that, viewed as a whole, the Transportation Act was a vigorous, forward-looking, constructive enactment.

Even applying counsel's test, we submit that after Congress had for more than thirty years withheld from the Commission the power to take constructive, affirmative action in major matters under Paragraph 3 of Section 3 by the retention of the restrictive words

> "but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business",

Congress had permitted the lapse of sufficient time for caution and circumspection when, in 1920, it removed the above hobble from Paragraph 3 and also enacted Paragraph 4 of Section 3 of the Act.

We shall now refer, very briefly, to a few special points listed by counsel in this section of his brief.

**a. New National Railroad Policy—Union Passenger Stations.**

Under the head of The Law, III, we have set forth what we have understood to be the New National Railroad Policy, established by the Transportation Act, 1920, as distinguished from counsel's "Cautious Approach Congressional Plan" as explained on pages 48 to 55 of his brief.

In pursuance of its policy to strengthen the power and authority of the Commission, Congress, in the Transportation Act, in addition to dealing with many other subjects, took the following action with reference to *union passenger depots:*

(1) As to Paragraph 3 of Section 3, struck out the limiting words which had theretofore had

the effect of preventing any order of the Commission for the construction and operation of a union passenger station; and

(2) As to Paragraph 4 of Section 3, added this paragraph in toto, thus establishing a machinery by which the Commission itself may fix the compensation to be paid to an owning carrier whose property is to be jointly used by another carrier or carriers.

In view both of the general congressional plan and of the specific action of Congress on the subject of union passenger depots, we can not believe that counsel for the Commission is correct when he argues, repeatedly, that the authority which Congress has conferred on the Commission on the subject of union passenger depots is merely "indirect and restrictive" or "permissive" alone or merely "preventive".

The very case of intrastate rates discriminating against interstate commerce cited by counsel on page 50 of his brief illustrates, in our opinion, much more correctly the action taken by the Congress in 1920. As counsel points out, prior to 1920 the Commission's authority as to such rates was only indirect; but the Transportation Act authorized the Commission to deal directly with such rates, i. e., affirmatively order the establishment of such intrastate rates as will remove the discrimination. *Railroad Commission of Wisconsin v. C. B. & Q. R. Co.*, 257 U. S. 563, 584. Is it reasonable to assume that Congress, while taking this

*forward* step as to such intrastate rates and many other matters should at the same time have taken the *backward* step of superseding the direct, affirmative power of the States as to union passenger stations and substituting for the same a mere "negative, indirect or restrictive" power?

Referring again specifically to union passenger stations, is it reasonable to assume that Congress, while conferring the clearly established direct and affirmative power where the *land* is already in railroad ownership (Paragraph 4 of Section 3) should have conferred only a "negative, indirect or restrictive" power if the land happened to be still owned by John Smith, a third party?

Is there any reason why the new national railroad policy should stop at the line which bounds terminal land already in railroad ownership and refuse to extend beyond to the lands of third parties?

Is there any rhyme or reason for any such distinction?

**b. Local Matters.**

At pages 18, 48 to 50 and 54 of his brief, counsel for the Commission presents an argument to the effect that the installation of union passenger stations in large cities involves problems "peculiarly" or "primarily" of *local concern* which are subject to the police power of the states and that hence an intent by Congress to "invade" that field must be found in ex-

the effect of preventing any order of the Commission for the construction and operation of a union passenger station; and

(2) As to Paragraph 4 of Section 3, added this paragraph in toto, thus establishing a machinery by which the Commission itself may fix the compensation to be paid to an owning carrier whose property is to be jointly used by another carrier or carriers.

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press language. Counsel says further that the jurisdiction here claimed for the Interstate Commerce Commission "would trench on State authority".

We submit, very respectfully, that the conclusive answer to this argument is found in the decision of this Court in the *Los Angeles Union Station Case,* in which case this Court points out that the union passenger station here proposed for "three great interstate railway systems in the largest city of our western coast" is *not* a *"local union station"* but is a station of an entirely different character which is subject to the jurisdiction of the Interstate Commerce Commission (264 U. S. 331, 342, 346, 347).

At page 345, the Court expresses its views with reference to the kind of *local union station or terminal* to which counsel's argument might apply and over which a state commission might, under the police power, retain jurisdiction, as follows:

> "One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of *merely local union stations* or terminals *without extensions of main tracks and substantial capital outlay* should be regarded as an *ordinary exercise of the police power of the state* for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers."

The Court, however, hastened to point out that such a purely local situation would be far different from

that presented in the Los Angeles case and in this connection said (p. 346):

> "But there is a great difference between such relocation of tracks or *local union stations and what is proposed here.* The differences are more than that of mere degree, they and their consequences are so marked as to constitute a *change in kind.*"

The difference between a purely local situation over which the state would retain its control under the police power and the facts of the Los Angeles union passenger station case was further emphasized by this Court in its recent decision in *Lehigh Valley Railroad Company v. Board of Public Utility Commissioners,* 278 U. S. 24, decided on November 19, 1928. The Court there upheld an order of the Board of Public Utility Commissioners of New Jersey requiring the Lehigh Valley Railroad Company to expend $324,000 in eliminating two railroad grade crossings and substituting an overhead crossing. In the course of its decision, the Court takes occasion to distinguish between *"purely parochial matters"* such as the elimination of railroad grade crossings without anything further, and a union passenger station such as that proposed for Los Angeles, as follows (p. 35):

> "It certainly was not intended by the Transportation Act to take from the States or to thrust upon the Interstate Commerce Commission investigation into *parochial matters* like this, unless by reason of their effect on economical management and service their general bearing is clear.

*Railroad Commission v. Southern Pacific Company*, 264 U. S. 331."

(NOTE: This is the decision to which we have been referring as the *Los Angeles Union Station Case.*)

The Court then proceeds as follows:

> "The latter case makes a *distinction between* the *local character of* the *normal elimination of grade crossings and* the *vital character* from the standpoint of finance of the investment of large sums *in the erection of a union station.*"

This most recent decision of this Court thus emphasizes the distinction between matters of a purely "local" or "parochial" character such as the elimination of the ordinary railroad grade crossing (which matters are, within limits, left to the states under their police powers) and the vitally different matters of union passenger stations in large cities, such as the one proposed for Los Angeles (which matters fall within the jurisdiction of the Federal Government under the commerce clause of the Federal Constitution and the statutes enacted thereunder).

We believe that it must be apparent that the powers which Congress has conferred upon the Interstate Commerce Commission in the matter of union passenger stations in no way "trench upon the State's authority" or constitute an "invasion of the field" as urged by counsel for the Commission (Brief of Interstate Commerce Commission, pp. 48-9, 54), but that they were conferred under and in accordance with the "commerce clause" of the Federal Constitution.

We do not believe that it is accurate to speak of the exercise of a Federal power conferred by the Federal Constitution as a "trenching upon" or an "encroachment upon" the police power of the States. In fact, the shoe is upon the other foot, as appears from the decision of this Court in the *Los Angeles Union Station Case,* in which case (264 U. S. 331, 345) the Court says that one might conceive of cases of merely local union stations as to which the ordinary exercise by the state of its police power

> "would not *trench* upon the power and supervision of the Interstate Commerce Commission in securing proper regulation for an interchange of interstate traffic or passengers."

**c. The Proviso in Paragraph 17 of Section 1 of the Act.**

At page 49 of his brief, counsel for the Commission relies on the proviso in Paragraph 17 of Section 1 of the Act, reading as follows:

> "Provided, however, that nothing in this Act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for *intrastate* business, *except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act.*"

Attention is invited to the fact that through what seems clearly to be a clerical error, said proviso, as printed on page 49 of the Commission's brief, omits the very important words "for intrastate business" which occur next after the words "passenger service".

The above proviso is quoted by counsel in support of his argument that Congress has at all times had in mind the inhibition against "encroachment" of Federal authority upon the rights of the States.

Said proviso was also quoted by this Court in the *Los Angeles Union Station Case* (264 U. S. 331, 346), but only in connection with a situation so distinctly local that it might be regarded as left to the state under its police powers but even in such a case, so distinctly local in character, "a lawful order of the Interstate Commerce Commission would raise a question of the power of the State Commission".

In other words, this proviso is not a reservation of power to the States but rather an express declaration that an order of state authorities, under the police power, relating to freight or passenger service for *intrastate business* must fall in so far as it is inconsistent with a lawful order of the Interstate Commerce Commission made under the provisions of the Interstate Commerce Act.

**d. Absence of Notice to State Authorities.**

At page 49 of his brief, counsel for the Commission argues that whenever Congress intends to confer upon the Interstate Commerce Commission authority to act in a matter which, as he says, "trenches upon the State's authority", provision is made for *notice* to State authorities and opportunity to appear at a *hearing*. From the fact that no such provision for

notice and hearing appears in the Act in connection with Paragraphs 3 and 4 of Section 3, counsel argues that it could not have been intended by those paragraphs to confer any "direct or affirmative" authority on the Commission.

It is true, of course, that in a few matters, such as extensions and abandonments of lines, consolidations and attacks upon state rates, Congress has provided for such notice and hearing.

However, in other matters likewise important to the States, in which "direct and affirmative" power has unquestionably been conferred upon the Commission, no provision for such notice or hearing has been made. See, in this connection, the following provisions of the Act:

Regulation of car service—Sec. 1, Pars. 10-14.

Establishment of facilities for interchange of traffic and for receipt, forwarding and delivery of passengers (conceded as to connecting tracks)—Sec. 3, Par. 3.

Joint use of existing terminal properties—Sec. 3, Par. 4.

Establishment of through routes and joint rates between rail and water lines—Sec. 6, Par. 13.

Establishment of rates, classifications, regulations and practices—Sec. 15, Par. 1.

Establishment of through routes and joint rates between rail lines—Sec. 15, Par. 3.

Numerous other illustrations could be cited, but we believe that the foregoing are sufficient.

We know of no decision pointing to the presence or the absence of provision for such notice or hearing as having any significance in connection with the question whether or not a "direct and affirmative" power has been conferred upon the Interstate Commerce Commission.

In fact, counsel's argument would seem to have been answered by two recent decisions of this Court holding that under Paragraphs 3 and 4 of Section 3 of the Act (the very paragraphs here under consideration) "direct and affirmative" power has been conferred upon the Commission, though neither of said paragraphs contains any provision for such notice or hearing. We refer, of course, to

*Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co.,* 271 U. S. 244;

*Los Angeles Union Station Case,* 264 U. S. 331.

We believe that this argument requires no further consideration.

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In concluding our comments on this third main point of counsel for the Commission, we submit that as far as the argument concerning the "Congressional Plan" is concerned, the action of Congress in amending Paragraph 3 of Section 3 and adding Paragraph 4 to Section 3 in 1920 was in entire harmony and accord

with the New National Railroad Policy made effective by the Transportation Act and that said policy, in general, is an affirmative, constructive and forward-looking policy and not a policy of "cautious and halting approach", as argued by counsel for the Interstate Commerce Commission.

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**4. ARGUMENT OF COMMISSION'S BRIEF THAT THE STATES HAVE BEEN DIVESTED OF AUTHORITY TO ORDER CONSTRUCTION OF UNION PASSENGER STATIONS BUT THAT SUCH AUTHORITY HAS NOT BEEN CONFERRED ON THE INTERSTATE COMMERCE COMMISSION WOULD RESULT IN THE INABILITY OF ANY PUBLIC AUTHORITY, STATE OR FEDERAL, TO MAKE THE ORDER PRAYED FOR BY THE CITY OF LOS ANGELES AND WOULD MAKE ALL PUBLIC AUTHORITY IMPOTENT IN THAT RESPECT.**

In the fourth section of his brief (Brief of Interstate Commerce Commission, pp. 55-62), counsel refers to certain decisions in which it was held that the authority of the States had not been excluded by Congressional action and to other decisions in which the contrary conclusion was reached. In some of the latter cases, it was held that Congress had manifested an intention to exclude further State action, while, at the same time, failing to confer authority upon any Federal agency.

It has not been clear to us on which of these two lines of decisions counsel intends to rely in the present case.

However, we judge from the heading of this section of his brief (p. 55) that counsel intends to take the position that the mere act of exclusion of the States from a certain field of interstate commerce does not necessarily mean a concurrent vesting of like authority in the Interstate Commerce Commission. With this statement we can, of course, readily agree. However, in our opinion, the matter has no proper application here for the simple reason that the same provisions of the Transportation Act which divested the States of authority in this field also clearly vested the authority in the Interstate Commerce Commission.

In *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, 227, the Supreme Court of California held that

> "full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject sought by it to be exercised in the several proceedings before it and by the order presented for review herein."

As has already been noted, the judgment of the Supreme Court of California annulling the order of the Railroad Commission of California for the reasons above stated was thereafter affirmed by this Court. *Los Angeles Union Station Case,* 264 U. S. 331.

These decisions are in harmony with the well-established rule that when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority, the regulating power of the State ceases to exist.

*Northern Pacific Railway Co. v. Washington,* 222 U. S. 370;

*Adams Express Co. v. Croninger,* 226 U. S. 491;

*Erie Railroad Co. v. People,* 233 U. S. 671;

*Southern Railway Co. v. Railroad Commission of Indiana,* 236 U. S. 439;

*Charleston & Western Carolina Railway Co. v. Varnville Furniture Co.,* 237 U. S. 597;

*O. W. R. & N. R. R. Co. v. Washington,* 270 U. S. 87;

*Napier v. Atlantic Coast Line Railroad Co.,* 272 U. S. 605.

Hence we find ourselves in this position. The State of California has been divested of its power and authority to require the construction and operation of a union passenger station in Los Angeles. The Supreme Court of California has so decided and that decision has been affirmed by this Court. If counsel's argument is correct, Congress, while rendering impossible the further exercise of that power by the States, has, at the same time failed to confer it upon the Interstate Commerce Commission. Consequently, under counsel's argument, no public authority, either

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State or Federal, now has authority to make the order prayed for by the City of Los Angeles, and all public authority is now impotent in that respect.

The conclusion of a *vacuum* to which counsel's argument leads is obviously so contrary to the public interest that it should not be reached unless there is no escape therefrom.

> *Cleveland, C. C. & St. L. Ry. Co. v. United States,* 275 U. S. 404, 412.

This Court, in the *Los Angeles Union Station Case,* avoided any such conclusion by finding that the Interstate Commerce Commission now has full and complete authority not only to make findings and issue certificates but also to make the final mandatory order.

The decision of this Court is all the more significant when it is remembered that there was no one before the Court advocating any mandatory authority in the Commission. The Court might well have disposed of the matter by a mere affirmance of the decision of the Supreme Court of California. However, from an obvious desire to render a constructive service, the Court went further and set forth clearly the power and authority of the Interstate Commerce Commission, not merely to make the preliminary findings of fact and issue the necessary certificates but also to issue the final mandatory order.

The City of Los Angeles is grateful to the Court for the assistance which the Court thus rendered to all parties interested in this highly important prob-

lem and hopes that it has not been in error in following steadfastly the simple, direct and constructive course which it understood the Court to have charted in its said decision.

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## VII.

### CONCLUSION.

In conclusion, we submit, very respectfully:

1. That under both Paragraphs 3 and 4 of Section 3 of the Interstate Commerce Act, the Interstate Commerce Commission has power to require the construction and operation of the union passenger station as prayed for by the City of Los Angeles;

2. That the conclusion just stated is in harmony with the new national railroad policy made effective by Congress in the Transportation Act, 1920;

3. That said conclusion follows inescapably from the decision of this Court in the *Los Angeles Union Station Case,* the *Alabama & Vicksburg Railway Company Case,* the *Lehigh Valley Railroad Company Case* and other cases;

4. That said conclusion avoids the vacuum which would otherwise exist, under which no public authority would any longer have authority to direct the construction of union passenger stations even though the public interest clearly so requires; and

5. The Commission having refused to consider the evidence bearing on this issue, by reason of an erro-

neous view on the subject of its jurisdiction, the writ of mandamus should issue as prayed for.

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Dated: October 21, 1929.

(APPENDIX FOLLOWS.)

## Appendix 1.

### CITATIONS OF THE VARIOUS LOS ANGELES UNION STATION DECISIONS.

1. *First Decision of California Railroad Commission.*

   *Los Angeles Union Depot Case*—Volume 20, Opinions and Orders of the Railroad Commission of California, page 937—December 6, 1921.

2. *Decision of Supreme Court of California.*

   *Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission of California,* 190 Cal. 214—December 19, 1922.

3. *Decision of Supreme Court of United States.*

   *Railroad Commission of California v. Southern Pacific Company,* 264 U. S. 331—April 7, 1924.

4. *First Decision of Interstate Commerce Commission.*

   *City of Los Angeles v. Los Angeles & Salt Lake Railroad Company et al.* (*Los Angeles Passenger Terminal Cases*) 100 I. C. C. 421—July 6, 1925.

5. *Second Decision of Railroad Commission of California.*

   *Los Angeles Union Station Case,* Volume 30, Opinions and Orders of the Railroad Commission of California, page 151—July 8, 1927.

6. *Second Decision of Interstate Commerce Commission.*

   *City of Los Angeles v. Los Angeles & Salt Lake Railroad Company et al.* (*Los Angeles Passenger Terminal Cases*), 142 I. C. C. 489—May 8, 1928.

## Appendix 2.

### VARIOUS PROVISIONS OF INTERSTATE COMMERCE ACT, AS AMENDED.

Section 1, Paragraph (3).

"The term 'railroad' as used in this Act shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

Section 1, Paragraph (15).

"Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine * * * (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may

agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable. * * *"

Section 1, Paragraph (17), proviso.

"*Provided, however,* That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."

Section 1, Paragraphs (18-22).

"(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act, over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

"(19) The application for and issuance of any such certificate shall be under such rules and

regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

"(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating

body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

"(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: *Provided,* That no such authorization or order shall be made unless the Commissic inds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban

electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

Section 3, Paragraph (3).

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

Section 3, Paragraph (4).

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal *facilities* to handle its own business, it shall have power to require the use of any such terminal facilities including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal

facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the same may be."

Section 12.

"* * * and the Commission is hereby authorized and required to execute and enforce the provisions of this act; * * *"

## Appendix 3.

FINDINGS OF FACT OF INTERSTATE COMMERCE COMMISSION.

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

"2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of Los Angeles, Calif., as described in the application in Finance Docket No. 3569 (application of carriers).

"3. That the present and future public convenience and necessity require and will require (a) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly

to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

"4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

"5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

"6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of

any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

"7. That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them of a union passenger station within that portion of the City of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

"8. That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area con-

sidered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14,778, to which reference has been made hereinabove.

"9. That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

"10. That said construction ought reasonably to be made."

(NOTE: The first 6 of the above findings are found in 100 I. C. C. 421, 459-60. The last 4 are findings added by the Railroad Commission of California (Volume 30, Opinions and Orders of the Railroad Commission of California, pages 151, 161) and found by the Interstate Commerce Commission to have "sufficient support in the record" (142 I. C. C. 489, 496).)

Also

"a plan for a station within the Plaza area as here considered to be *in the public interest*".

(NOTE: This unnumbered finding or conclusion is found in 100 I. C. C. 421, 461. It was adhered to, together with all the other findings, in 142 I. C. C. 489, 496. It was referred to, in quotation marks, in the Commission's return or answer in this proceeding (R. 153). It was reproduced, in quotation marks, in the Commission's brief on file herein (p. 13).)

## Appendix 4.

### CERTIFICATES ISSUED BY INTERSTATE COMMERCE COMMISSION.

*It is hereby certified,* That the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company of extensions of their respective main lines of railroad in the city of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment of operation of all passenger and freight-train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif.,

as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal.

(NOTE: These certificates are a part of the "Certificate and Order" issued by the Interstate Commerce Commission in its second decision in the *Los Angeles Passenger Terminal Case* (142 I. C. C. 489—May 8, 1928). See also Exh. E to Petition for Writ (R. 146-7).)

## Appendix 5.

### MAP AND PLAN.

A map showing the pertinent "railroad and industrial district of Los Angeles" precedes page 1 of Exhibit A attached to the Petition for the Writ and will be found opposite page 28 of the Record.

The plan for the "union passenger terminal at the Plaza" identified as "C. R. C. Exhibit 4 B" appears at the end of Exhibit E attached to the Petition for the Writ and will be found opposite page 128 of the Record.

Due service and receipt of a copy of the within brief is hereby admitted this.....day of October, 1929.

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*Counsel for Interstate Commerce Commission.*

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CHARLES ELMORE C
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No. 54

# In the Supreme Court
OF THE
# United States

October Term, 1929.

INTERSTATE COMMERCE COMMISSION,
*Petitioner,*

vs.

UNITED STATES OF AMERICA, at the relation of CITY OF LOS ANGELES, a municipal corporation,
*Respondent.*

On Writ of Certiorari to the Court of Appeals of the District of Columbia.

## BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF AMICI CURIAE.

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*Respondent.*

On Writ of Certiorari to the Court of Appeals of the District of Columbia.

## BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF AMICI CURIAE.

### INTRODUCTION.

This brief is a reply, filed by leave of this Court, to brief filed herein by leave of Court, by amici curiae on behalf of the Southern Pacific Company and other carriers.

NOTE: Throughout this brief, italics, unless otherwise stated, are ours. The printed "Transcript of Record" will be thus referred to (R).

The brief of amici curiae consists primarily of arguments on two main points, with their ramifications, as follows:

1. An argument that, by reason of the Fifth Amendment to the Federal Constitution, Congress could not constitutionally order the construction and operation of a union passenger depot as prayed for by the City of Los Angeles; and

2. An argument that, as a matter of statutory construction, Congress has not delegated to the Interstate Commerce Commission the power to make such order.

We shall address ourselves to these two points.

---

## I.

### CONGRESS HAS POWER AND AUTHORITY TO ORDER, OR TO EMPOWER, INTERSTATE COMMERCE COMMISSION TO ORDER, CONSTRUCTION AND OPERATION OF UNION PASSENGER STATION AS PRAYED FOR BY CITY OF LOS ANGELES. SUCH ORDER WOULD IN NO WAY VIOLATE FIFTH AMENDMENT.

#### 1. ARGUMENT OF CARRIERS UNDER FIFTH AMENDMENT IS UNSOUND BECAUSE BASED ON FUNDAMENTAL FALLACY, CONTRARY TO FACTS, THAT ORDER PRAYED FOR BY CITY OF LOS ANGELES WOULD REQUIRE THEM TO UNDERTAKE A NEW SERVICE WHICH THEY HAVE NEVER UNDERTAKEN TO RENDER.

The argument of the carriers that Congress could not order, or empower the Interstate Commerce Com-

mission to order, the construction and operation of a union passenger station as prayed for by the City of Los Angeles is based entirely on the proposition that such order would require them to undertake a new service which they have never undertaker to render.

It is well established by numerous decisions of state courts in union passenger station cases decided prior to the Transportation Act, 1920, that under the *police power* public authority has power to require the construction and operation of union passenger stations where legislative authority exists and where such order would, on the facts, be reasonable.

*Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 62 So. 749;

*Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, 64 So. 13;

*Mayor and Aldermen of Worcester, et al. v. Norwich and Worcester Railroad Company, et al.*, 109 Mass. 103;

*Dewey v. Atlantic Coast Line, et al.*, 142 N. C. 392, 55 S. E. 292;

*Missouri, O. & G. Railway Co. v. State*, 29 Okl. 640, 119 Pac. 117;

*State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 165 S. W. 491;

*Gulf, Colorado & Santa Fe Railway Company et al. v. State* (Tex. Civ. App.), 167 S. W. 192;

*State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 199 S. W. 829.

Four times—twice by the California Railroad Commission and twice by the Interstate Commerce Commission—the plan for the construction of the union passenger station near the Plaza in Los Angeles has been found by public administrative tribunals to be reasonable and in the public interest.

On this same subject, the Court of Appeals of the District of Columbia, in the decision now under review herein, said (R. 169):

> *"The situation here disclosed is most reasonable and well within the jurisdiction of administrative authority."*

The carriers seek to escape the effect of the numerous decisions hereinbefore cited by urging (contrary to the facts in quite a number of these decisions) that they do not apply where it would be necessary for the carriers to make any *extensions* of their tracks in order to reach the site of the proposed new union passenger station.

To give point to this contention, the carriers ask whether Congress could compel the Santa Fe to establish station facilities at San Fernando, a point within the far-flung city limits of Los Angeles some 15 to 20 miles away from the Santa Fe's existing line, or whether Congress could compel a railroad company which had established a terminal at Boyle Heights, in the eastern edge of the City of Los Angeles, to move its terminal many miles across the City to Hollywood, in the west end of the City (Brief of Amici Curiae, pp. 12-13).

These illustrations reveal the utter weakness of the carriers' position. No one is here proposing any such fanciful or unreasonable acts.

All that the City of Los Angeles is asking is that the carriers be directed to perform in a more adequate, more convenient and more safe manner the identical passenger service which for years these carriers have undertaken and held themselves out as performing in the identical portion or section of the City where their lines of railroad are now being operated and where their passenger stations have for many years been located.

**a. Location of Site of Proposed Union Passenger Station.**

The map of the Railroad and Industrial District of Los Angeles which appears opposite page 28 of the record and the Plan for Union Passenger Terminal at the Plaza which appears opposite page 128 of the record show the site of the proposed union passenger station in relation to the existing tracks and passenger depots of the carriers.

As appears from the map first referred to, the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under a single bridge or viaduct over the Los Angeles River, known as the North Broadway Viaduct, at the entrance to the city from the north. The two former lines are located under said viaduct along the west bank of the river and the latter line along the east bank. The point at

which said tracks of said carriers run under the North Broadway Viaduct is located only approximately three-fourths of a mile distant northerly from the site of the proposed union passenger terminal.

As also appears from said map and plan, the Santa Fe's main line tracks run directly across the site of the proposed union passenger terminal near the west bank of the river, the Southern Pacific's main line tracks run across the site along Alameda Street and the Salt Lake's branch line track lies along the east bank of the river, directly across the river from the site.

Said map also shows that the present passenger stations of all three railroads are located within the same section or portion of the City as the site of the proposed union passenger terminal, the Southern Pacific passenger depot being within approximately one mile of the proposed site, the Santa Fe's depot within less than a mile and the Salt Lake's former depot (now burned) within only about half a mile.

This situation was thoroughly understood by this Court when it decided the *Los Angeles Union Station Case,* 264 U. S. 331, 338-40.

What is here proposed is merely a regulation in the public interest, under the police power, of the passenger service which these carriers have for many years been performing by means of their tracks, trains and depots in this identical railroad and industrial district of the City of Los Angeles.

The Interstate Commerce Commission so understood the situation. The Commission found that the City's proposal is just and reasonable and for that reason made all the *findings* and issued all the *certificates* requested by the City and necessary for the consummation of the project. The only request not granted was for a *final order* requiring the construction of the union passenger station. The failure to grant that request was not due to doubt on the *facts* as to *reasonableness* but to a belief that under a proper interpretation of the Interstate Commerce Act that specific power has not been conferred by Congress.

**b. Authorities Relied on by Carriers are not in Point.**

In support of their contention as to the Fifth Amendment, the carriers rely on a number of decisions of the Supreme Court of California (Brief of Amici Curiae, pp. 13-17). However, none of these cases are in point, for the reason that in each of them the Railroad Commission of California had ordered the common carrier or public utility affected to undertake a service which the Court found it had not theretofore undertaken to render.

Thus, in *Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission,* 173 Cal. 577, the Railroad Commission had ordered the Santa Fe to construct and operate a line of railroad twelve or more miles in length into territory not theretofore served by the railroad.

In *Pacific Telephone and Telegraph Co. v. Eshleman,* 166 Cal. 640, the Commission had directed the

Pacific Telephone and Telegraph Co. to construct a physical connection between its lines and those of two rival telephone companies and to transmit telephone messages thereover—a service to which the court found the Pacific Company had never dedicated its property.

In *Del Mar Water, Light and Power Co. v. Eshleman,* 167 Cal. 666, the Commission had made an order directing a water company to extend its water distributing system into territory which the court found the water company had never held itself out as ready or willing to serve.

Finally in *Hollywood Chamber of Commerce v. Railroad Commission,* 192 Cal. 307, an attempt was made to compel the Railroad Commission to hear and determine a complaint which asked that the Commission make an order requiring Los Angeles Railway Corporation to construct *ten and one-half miles* of double track railroad into Hollywood—*a territory which the railway corporation had never undertaken to serve.*

We submit that these cases do not support the contention of the carriers as applied to the facts of this case.

**c. Franchises.**

At pages 22-24 of their brief, the carriers cite the California Civil Code, Section 291, and the case of *Hollywood v. Railroad Commission,* 192 Cal. 307, in connection with their argument that it will be neces-

sary for them to secure additional franchises to enable them to carry out an order for the construction and operation of the proposed union passenger station.

However, the franchises there referred to are very different from those which the carriers will require in connection with the union station project. Section 291 of the Civil Code provides that a railroad corporation must state in its articles of incorporation, among other matters, "the *place* from and to which it is intended to run, and all the intermediate branches". The *place* here is Los Angeles. No change in this general franchise is proposed. In the *Hollywood* case, an attempt was being made to compel a street railway company to extend its system into a new territory which the railway company had never undertaken to serve. The California Supreme Court pointed out that the railway company had no franchise for that purpose.

The franchises or permits necessary in the instant case are entirely different. They merely cover the right to cross a few streets in the vicinity of the site for the proposed union passenger station so as to bring about the necessary track rearrangements.

We are not impressed by the argument of the carriers that they can block the public authorities by refusing to make application to the City of Los Angeles for franchises authorizing the use of certain new or additional public street areas in connection with the construction of a union passenger station in the Plaza Area. If the carriers can be directed to use the power of eminent domain to acquire such addi-

tional land as they may need in connection with the union passenger station project (as is undoubtedly the law) we know of no reason why they can not likewise be directed, if necessary, to make application for the necessary franchises. It would seem to be ridiculous if the carriers could block a great project convenient and necessary in the public interest by merely "sitting tight" and refusing to make a routine application for a franchise which the city authorities are entirely willing to grant.

The conclusive answer to this contention is that the City Council of Los Angeles has already placed itself on record formally as willing to grant whatever franchises may be necessary in order to enable the carriers to make effective such plan for the construction of a union passenger station in Los Angeles as may be ordered by the Interstate Commerce Commission. The situation is thus set forth in Paragraph XVII of the Petition for the Writ (R. 25):

> "That the city of Los Angeles, by formal resolution of its City Council now in full force and effect, stands ready to grant such franchises or permits and to enact such ordinances for the opening or closing of all such public street areas as may be necessary to make fully effective the said order for which it prays in said Docket No. 14,778 before the Interstate Commerce Commission."

We believe that further discussion of this point is unnecessary.

d. **Argument of Carriers on Questions of Policy and Management.**

At page 20 of their brief, carriers urge that

> "the investment of new money in additional enterprises is strictly a matter of corporate business policy to be left to the sound discretion of the directors, and may not be compelled by any governmental agency."

If this statement refers to entirely new enterprises in which the carriers have never engaged, such as the construction of a branch line of railroad 12 or 15 miles into a territory not theretofore served, it has no bearing on the facts of this case and need not be further considered.

On the other hand, if the statement is intended to apply to the facts of the instant case, it is an entirely erroneous statement of the law.

The books are full of cases upholding the right of public authorities, state and federal, to require common carriers and other public utilities to invest money in new structures to enable them to perform more adequately, conveniently and safely, their duties to the public. The most recent decision of this character by this Court is, we believe, *Lehigh Valley Railroad Company v. Board of Public Utility Commissioners of New Jersey,* 278 U. S. 24, decided on November 19, 1928. In that case, this Court upheld an order of the Board of Public Utility Commissioners of New Jersey requiring the Lehigh Valley Railroad Company to construct at a cost of $324,000 a new structure, namely, an overhead crossing, for

the purpose of eliminating two railroad grade crossings.

At pages 19 and 20 of their brief, the carriers refer to two New York decisions to the effect that under the statutory provisions in effect in New York the Public Service Commission of that state could not override the discretion of the officers of a public utility on the subject of the issue of new securities. However, the Court's attention is respectfully invited to the fact that under the provisions of Section 20a of the Interstate Commerce Act the Interstate Commerce Commission now has very broad and comprehensive authority over the issue of securities by common carriers subject to the Act, including the right to override the "discretion" of the directors and other officers and that Paragraph (3) of said Section expressly provides:

> "(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises * * *"

Whenever the carriers desire to escape regulation in any particular, they always urge that the particular question is one of "policy and management" to be determined by their board of directors. They have made this contention in rate matters, service matters, matters relating to the issue of securities, and, in fact, at one time or another, with reference to every matter

affecting their relationship to the traveling and shipping public.

The same argument was made, without effect, to this Court in the *Los Angeles Union Station Case.*

As far as we can ascertain, no court in any union passenger station case has ever sustained this contention of the carriers, while, on the other hand, the argument had been ruled against in every union station case in which it has been presented.

We do not consider it necessary to devote any further time to this contention.

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**2. UNDER THE POLICE POWER, PUBLIC AUTHORITY MAY REQUIRE THE CONSTRUCTION AND OPERATION OF UNION PASSENGER STATIONS WHENEVER THE POWER HAS BEEN CONFERRED AND, ON THE FACTS, SUCH ORDER WOULD BE REASONABLE.**

This has been held in many union passenger station cases decided by state courts prior to the Transportation Act, 1920.

These decisions are in point here for the reason that in these cases the carriers pressed the identical points against the decisions of the state authorities, under the *Fourteenth* Amendment which they now urge against possible action by the Interstate Commerce Commission, a federal tribunal, under the *Fifth* Amendment.

The carriers seek, on pages 26 to 31 of their brief, to distinguish or explain away these decisions but we

are not convinced that their efforts have in any case been successful.

**a. Union Depot Decisions of State Courts.**

In *Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 62 So. 749, the Railroad Commission of Alabama ordered three railroad companies to construct a union passenger station upon a site selected by the Commission. The railroad companies were ordered to acquire said site by purchase or condemnation. Complainant alleged that it had its own depot and had already arranged to construct a new and larger depot upon its own site. It averred that the Commission's order was unreasonable and arbitrary and deprived complainant of its property without due process of law in violation of the Constitutions of Alabama and the United States. The Court held that the Railroad Commission's order, made in the exercise of the state's police power, did not violate any provision of the State or Federal Constitutions, "notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot". On this point, the Court said (p. 752):

> "It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state."

The carriers seek to distinguish this case (Brief of Amici Curiae, p. 26) by saying that "evidently the proposed station was located at a point where three

railroads converged and the order therefore did not involve the question of the power to compel an *extension* of lines by any carrier." We are not impressed by this contention. The report shows clearly that the Commission directed the railroads to acquire a new site not then owned by any of the carriers and directed that, if it should become necessary, one of the three railroads, named in the order, should acquire the land either by purchase or by condemnation. We do not understand how the railroads were to reach this new site unless they extended their lines thereto. We understand the case as necessarily involving an order to *extend* the tracks of the carriers to the new site. Otherwise, the Commission's order would be an idle act.

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, 64 So. 13, the Railroad Commission of Alabama ordered 5 railroads to secure sufficient grounds within a specified territory in the city of Bessemer for a union passenger depot and to erect a union passenger depot thereon. The railroads having failed to submit plans for the site of the passenger depot or to agree on the apportionment of the expense, the Commission issued a supplemental order fixing the location of the depot and apportioning the cost thereof and directing the railroads to acquire the site by purchase or condemnation. The Railroad Commission's orders were held valid.

On page 16 of the Reporter, the court said:

> "Unless the contrary is clearly shown, we will presume not only that the place prescribed is

suitable, but that sufficient ground can be obtained, either by private purchase or by condemnation proceedings, at reasonable figures, for such station. Through the power of eminent domain which the law has conferred upon the railroad companies, they possess all the power which is necessary to acquire the needed lands at their fair value, and under the present state of the record, we must presume that the Railroad Commission has placed no unreasonable burden upon the railroad companies in so far as the acquisition of the needed ground for the station is concerned."

At page 18 of the Reporter, the court continued:

"It would, however, create a strange anomaly for the courts to hold that a state has the authority to require all railroad companies operating railroads within a city, whenever the reasonable needs of the traveling public are such as to demand a union passenger station at that point, to use a union passenger station in said city, and at the same time deny to the state the power to require such companies to jointly acquire by purchase or by condemnation proceedings, sufficient land upon which to maintain the building and to jointly construct the necessary building. The two positions are inconsistent and cannot co-exist. If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise."

The carriers seek to minimize the effect of the decision (Brief of Amici Curiae, pp. 26-27) by saying that "the power of the state to compel all railroads entering a given city to use a union station was conceded." However, the report shows that the Court made the

following decisions in overruling contentions of the carriers to the contra:

(1) That public authority may require several railroad companies to acquire, either by purchase or by condemnation proceedings, new land for a union passenger station (64 So. 13, 15-16);

(2) That an order for the construction and operation of a union passenger station is not void because it directs the railroads to abandon their presently occupied and used separate depots and depot facilities (64 So. 13, 16); and

(3) That the several railroads may be jointly directed to purchase or condemn the new land for the union passenger station (64 So. 13, 18).

On the general question of the constitutional power of the legislature to authorize a state railroad commission to require the construction of a union passenger station and to select the site thereof, the court concluded (64 So. 13, 18):

> "It seems to us, therefore, that the Legislature had the constitutional power to vest in the Railroad Commission the authority which it conferred upon it in the above-quoted section 5545 of Code of 1907 * * * and that no part of said section is violative of any clause of the state or federal Constitution."

In *Mayor and Aldermen of Worcester et al. v. Norwich and Worcester Railroad Company et al.*, 109 Mass. 103, a statute of Massachusetts provided that 5 railroad companies should unite in a union passenger station in Worcester; that commissioners should select

the site as between two sites named in the statute; that one of the railroads should erect the station with power to condemn, the other railroads paying rent; that after the completion of the station two specified railroads "shall respectively discontinue the present locations of their railroads in portions of the city of Worcester"; that all the railroad companies may and shall unite in the location and construction of one or more railroad tracks for their joint use; and that the railroads might each purchase or take such lands as might be necessary for their purposes.

The objecting railroads urged, among other matters, that to extend their railroads to the union station "would require the taking of much land from private persons for the location of the extensions, through densely settled portions of a populous city"; that the construction of the tracks would involve great expenditures; that one track extension would have a length of over one mile; that some of the railroads would be required to discontinue without compensation valuable portions of their present locations; and that public convenience and necessity would not be served by the changes ordered by the statute.

The Supreme Judicial Court of Massachusetts held that the statute was a reasonable exercise of the right to alter, amend or repeal corporate charters, reserved to the Legislature, and at page 113 said:

> "It is no valid objection to such alterations that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose, and to incur additional

> expense. The power to extend their tracks is often granted at their own request, and is granted with no less propriety when the interests of the public require it."

The carriers concede (Brief of Amici Curiae, p. 27) that this case is opposed to their contentions but seek to avoid its effect by urging that the decision (referring to the reserved power to alter, amend or repeal a corporate charter) "is in direct conflict with the decision of this Court in *Superior Water etc. Co. v. City,* 263 U. S. 125." However, we submit that the latter decision does not have the effect ascribed to it by the carriers and that it is not in point for them. The decision merely holds that a state legislature can not substitute an indeterminate permit provision for an existing *contract* between a city and a waterworks company. The police power was in no way involved. As we read the decision, it has no bearing on the present situation.

In *Dewey v. Atlantic Coast Line et al.,* 142 N. C. 392, 55 S. E. 292, a number of citizens of Goldsboro, N. C., brought an action against 3 railroad companies to prevent obedience by them to an order of the Corporation Commission of North Carolina requiring the railroad companies to construct a union passenger depot on a specified site somewhat removed from the site of the existing depots. In upholding the statute under which the Corporation Commission acted and also the Commission's order, the court, at page 294 of the Reporter, said that the power of the Legisla-

ture to enact such statutes has been established by numerous well-considered cases. The court also drew attention to the fact that the railroads might use the power of eminent domain to acquire such new properties as might be necessary to enable them to carry out the Commission's order (p. 295).

The carriers (Brief of Amici Curiae, p. 28) seek to overcome the effect of this decision by drawing attention to the fact that the action arose at the suit of third parties, namely, property owners, to enjoin the railroad companies from carrying out the Commission's order. However, the petitioning third parties raised the whole question of the authority of the legislature to enact a statute conferring such union passenger station powers on the Corporation Commission, and we submit that a decision on that issue is just as effective and significant in an action by these parties as it would have been in an action by the railroad companies or the Corporation Commission. The Court held:

(1) That the power of the Legislature to enact such statute has been established by numerous well-considered cases (55 S. E. 292, 294); and

(2) That the power of the State to act is not limited to a case in which the railroads already own the site and the right of way leading thereto. If additional property is necessary, it can be acquired by the railroads under the power of eminent domain (55 S. E. 292, 295).

In *Missouri, O. & G. Railway Co. v. State,* 29 Okl. 640, 119 Pac. 117, it appeared that the Corporation Commission of Oklahoma had made an order directing Missouri, O. & G. Railway Company and two other railroad companies to erect and maintain a union passenger depot in Durant, Oklahoma, at a designated site. Appellant urged that the Commission's order would compel it to abandon a right of way and station grounds theretofore acquired by it; that it would lose a bonus of $10,000 which citizens of Durant had subscribed for the erection of a passenger station on said station grounds; that the Commission's order would require appellant to acquire a new right of way through private property; that it would necessitate an expenditure by appellant of not less than $50,000; and that the order violated appellant's rights under the Constitution of the United States. In ruling against these contentions, the court, at page 121 of the Reporter, held that the Commission's order might be sustained either under the reserved power to amend, alter or repeal the charters of corporations "or on the ground, as stated by Judge Brewer in *State v. Kansas City etc. Ry. Co.,* 32 Fed. 722, that the same is a valid exercise of the police power of the state."

The carriers (Brief of Amici Curiae, p. 28) seek here to distinguish the case on the ground that "the ruling is rested squarely upon the authority of the Massachusetts case of *Mayor v. Norwich, etc.,* supra, which, as we have shown, is contrary to the decisions

of this Court and can not be accepted as authority here." To this contention we make two responses as follows:

(1) The carriers have not shown that the Massachusetts decision is contrary to the decisions of this Court. The only decision mentioned by the carriers in this connection, namely, *Superior Water etc. Co. v. City,* 263 U. S. 125, is not in point at all, as we have shown. Furthermore, this Court expressly cited the Massachusetts case with approval in *Wisconsin, Minnesota & Pacific Railroad v. Jacobson,* 179 U. S. 287, 302.

(2) The carriers are in error in saying that the decision in the Oklahoma case "is rested squarely upon the authority of the Massachusetts case * * *". The decision was rested not only upon the Massachusetts case but also, in express words

> "on the ground, as stated by Judge Brewer in *State v. Kansas City, etc., Ry. Co.,* 32 Fed. 722, that the same is a *valid exercise of the police power of the state.*"

Whatever other sources of authority may exist, it is, of course, settled law that in all cases the valid exercise by public authority of the power to require the construction and operation of union passenger stations springs fundamentally from the *police power.*

In *State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 165 S. W. 491, the state of Texas asked that a writ of mandamus issue to enforce an order of the Railroad Commission of Texas directing the 3 defendant railroad companies to erect and

maintain a union depot at Hillsboro, Texas. Judgment for the defendants was reversed and the case remanded for a new trial on issues of fact. At page 498 of the Reporter, the court said:

> "We have no doubt as to the constitutionality of the law requiring railroads to build union depots at such places and of such character as the Railroad Commission shall find necessary for the accommodation of the public, when it shall also have found the other facts required by the statute, but, if any doubt existed on the subject, it would be our duty to resolve it in favor of the statute."

Replying to the argument that the statute did not authorize the Railroad Commission to select the *site* of the proposed union depot, the court said (p. 498):

> "The statute explicitly grants the Commission the power to require railroads to build union depots, and that carries with it, by necessary implication, every power necessary to the accomplishment of such object. Courts ought not to resort to technicalities to override the clear import of a statute."

Answering the argument that the order of the Railroad Commission was void because it directed the construction of a union depot on a site owned by one of the railroads which refused to let in the others, the court said (p. 498):

> "But this is immaterial, as said appellees have the right to acquire, by condemnation proceedings, such interest in said land as is necessary for their depot purposes under the order of the Commission."

The carriers (Brief of Amici Curiae, p. 29) merely refer to this decision by saying that

> "the question of the power of the state to compel a railroad to extend its lines in order to enter a union station does not appear to have been raised."

This contention of the carriers is obviously in error, as appears from the above-quoted language from the decision.

The principal contentions of the carriers in support of their claims under the Federal Constitution may be thus summarized:

1. The carriers can not lawfully be required to abandon any of their existing passenger facilities.

2. The carriers can not lawfully be required to acquire additional land by the exercise of the power of eminent domain.

3. The carriers can not lawfully be compelled to grant the use of any portion of their property to a rival railroad.

4. No public authority can lawfully compel carriers to go to a new site within the same city and there erect a union passenger depot.

Each of these points has been decided, on numerous occasions, against the contentions of the carriers.

Without wearying the Court by further quotations from union depot cases, we shall merely cite the union depot decisions on each of these four points.

**(1) Abandonment of Existing Passenger Stations and Other Facilities.**

The following decisions hold that an order for the construction of a union passenger depot, otherwise valid, does not lose its validity because it contemplates the abandonment by one or more railroads of their existing passenger stations and other passenger facilities. Practically every order for the construction of a union passenger depot involves the abandonment of one or more existing passenger depots adequate for that railroad alone.

*Railroad Commission of Alabama v. Northern Alabama Ry. Co.*, 182 Ala. 357, 62 So. 749;

*Railroad Commission of Alabama v. Alabama Great Southern Ry. Co.*, 185 Ala. 354, 362, 64 So. 13, 16;

*State v. Jacksonville Terminal Co.*, 71 Fla. 295, 331, 71 So. 474, 484;

*Mayor & Aldermen of Worcester v. Norwich and Worcester RR. Co.*, 109 Mass. 103;

*Missouri, O. & G. Ry. Co. v. State*, 29 Okl. 640, 119 Pac. 117;

*Chicago, R. I. & Pac. Ry. Co. v. State*, 90 Okl. 173, 217 Pac. 147;

*State v. St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 930.

**(2) Acquisition of Additional Land by Eminent Domain Proceedings.**

The following decisions hold that the fact that compliance with an order for the construction of a union

passenger depot will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

*Railroad Commission of Alabama v. Northern Alabama Ry. Co.*, 182 Ala. 357, 62 So. 749;
*Railroad Commission of Alabama v. Alabama Great Southern Ry. Co.*, 185 Ala. 354, 361, 64 So. 13, 15, 16;
*Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co.*, 109 Mass. 103;
*Dewey v. Atlantic Coast Line*, 142 N. C. 392, 55 S. E. 292;
*State v. St. Louis Southwestern Ry. Co.*, (Tex. Civ. App.) 165 S. W. 491, 498, 199 S. W. 829, 830.

On this point, see also

*Wisconsin, Minnesota and Pacific Railroad v. Jacobson*, 179 U. S. 287, 302.

**(3) Use of Property of Rival Railroad.**

The fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire the right to use the property of a rival railroad will not make such order invalid. The public authorities may, under their police power, make such orders.

*Railroad Commission of California v. Southern Pacific Company*, 264 U. S. 331;
*Mayor & Aldermen of Worcester v. Norwich & Worcester RR. Co.*, 109 Mass. 103;

*Missouri, O. & G. Ry. Co. v. State,* 29 Okl. 640, 119 Pac. 117;

*Chicago, R. I. & P. Ry. Co. v. State,* 90 Okl. 173, 217 Pac. 147;

*State v. St. Louis S. W. Ry. Co.* (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

**(4) Selection of New Site.**

The fact that the public authority selects for the union passenger depot a *new site* on lands of third parties does not make the order invalid. Public authority has just as much power to select as a site the lands of third parties as lands already in railroad ownership.

*Railroad Commission of Alabama v. Northern Alabama Railway Co.,* 182 Ala. 357, 62 So. 749;

*Railroad Commission of Alabama v. Alabama Great Southern R. Co.,* 185 Ala. 354, 64 So. 13;

*Dewey v. Atlantic Coast Line R. Co.,* 142 N. C. 392, 55 S. E. 292.

**(5) Additional Authorities.**

In the following additional cases, the right of the public authorities to order the construction and operation of union passenger stations, where the facts showed such order to be reasonable, was upheld.

*State ex rel. Barton County v. Kansas City, Ft. S. & G. R. Co.,* 32 Fed. 722;

*State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co.*, 67 Fla. 441, 63 So. 729;

*Griffin v. Southern Ry. Co.*, 150 N. C. 312, 64 S. E. 16;

*Corporation Commission v. Seaboard Air Line Ry. Co.*, 161 N. C. 270, 76 S. E. 555;

*North Carolina Corporation Commission v. Southern Ry. Co.*, 185 N. C. 435, 117 S. E. 563;

*Missouri, K. & T. Ry. Co. v. State*, 38 Okl. 401, 133 Pac. 35;

*Chicago, R. I. & P. Ry. Co. v. State*, 90 Okl. 173, 217 Pac. 147.

We shall conclude this branch of our reply by quoting from the first decision of the Interstate Commerce Commission in the *Los Angeles Passenger Terminal* cases, 100 I. C. C. 421, 425 (R. 53) with reference to the effect properly to be given to the union passenger depot decisions of the state courts on which we rely, as follows:

> "All parties concede that if we have the power to require the construction of a union station, it has come in the Transportation Act, 1920. Prior to that enactment such power was clearly in the States. In numerous instances States had by constitution or statute delegated power to their railroad commissions to require the construction and operation of union stations. In such cases, where the facts reasonably come within the legislative enabling act, the State courts have upheld orders of the State commissions. The State courts have held the order could not be defeated (1) by show-

ing that compliance would require a railroad to acquire additional property by the exercise of the power of eminent domain, (2) or because it contemplated the abandonment by some railroads of their existing passenger stations and other passenger facilities, (3) or because compliance would require a railroad to acquire the right to use the property of a rival railroad."

(Note: There follows, in a footnote, the citation of the decisions of the state courts on which we rely on the question of deprivation of rights guaranteed by the Federal Constitution. 100 I. C. C. 421, 426 (R. 54).)

**b. Decisions of Supreme Court of United States.**

In *Wisconsin, Minnesota and Pacific Railroad v. Jacobson,* 179 U. S. 287, the Railroad and Warehouse Commission of Minnesota had made an order directing two railroad companies to make track connections. The carriers objected on the ground, among others, that in order to construct a connecting track it would be necessary for the company "to go outside of its right of way and to condemn land for that purpose" (p. 291). This Court affirmed the order. The carriers here say (Brief of Amici Curiae, pp. 31-2), that the case is not in point. We rely on the case to meet the contention of the carriers that they can not be compelled to acquire *new land* not now owned by them for the purpose of erecting a union passenger station thereon. In holding a similar contention to be unsound, this Court in the *Jacobson* case, held that the order of the Minnesota Commission was valid "although to carry out the judgment may require the exercise by

the plaintiff in error of the power of *eminent domain*" (179 U. S. 287, 302).

In the *Los Angeles Union Station Case,* 264 U. S. 331, the carriers made in full detail under the head of alleged violation of the *Fourteenth* Amendment precisely the same arguments which they now urge under the *Fifth* Amendment against the constitutionality of a possible order of the Interstate Commerce Commission. If by reason of any provision of the Federal Constitution no public authority has any power to order the construction of a union passenger station in Los Angeles under the circumstances here shown, this Court would undoubtedly have said so, whereupon the case would have been ended. However, this Court acted on the assumption that the appropriate public authority *does* have the power under these circumstances to order the construction of a union passenger station and, accordingly, addressed itself to the further questions in the case.

The carriers do not deny (Brief of Amici Curiae, (p. 32) that in the *Los Angeles Union Station Case* they urged against the validity of the order of the Railroad Commission of California all the points, under the *Fourteenth* Amendment, which they now urge against the authority of the Federal Commission under the *Fifth* Amendment.

We believe that we are justified, under the circumstances, in adding the decision of this Court in the *Los Angeles Union Station Case* to all the other union station cases holding that there is no merit in

the claims of the carriers of violation of rights under the Federal Constitution.

### 3. CONCLUSION AS TO FIFTH AMENDMENT.

In leaving the subject of the Fifth Amendment, we invite the Court's attention to the fact that the *carriers have been unable to point to a single union passenger decision of any court, state or federal, in support of their contentions.*

On the contrary, the numerous union passenger station cases show, in our opinion, very conclusively, that there is no merit in the argument of the carriers based on asserted violations of their rights under the Fifth Amendment or any other provision of the Federal Constitution.

Plainly, Congress has the power and authority to order, or to empower the Interstate Commerce Commission to order, the construction and operation of the union passenger station as prayed for by the City of Los Angeles.

The only remaining question is whether Congress has conferred that authority upon the Interstate Commerce Commission.

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## II.

## CONGRESS HAS CONFERRED ON INTERSTATE COMMERCE COMMISSION POWER TO MAKE ORDER PRAYED FOR BY CITY OF LOS ANGELES.

The carriers devote pages 34-66 of their brief to an argument that Congress has not, in fact, conferred on

the Interstate Commerce Commission the power and authority to make the order prayed for by the City of Los Angeles. This is solely a question of statutory construction of the Interstate Commerce Act.

This subject has already been quite fully covered by us in our brief in reply to the brief of the Interstate Commerce Commission, on file herein.

We shall reply here only to such new or additional matter as is contained in the brief of the carriers on this subject.

**1. Paragraphs 18 to 21 of Section 1 of the Act.**

At page 35 of their brief, the carriers say:

> "We do not think that the Commission had any authority or jurisdiction to issue any certificates because they were not asked for by the carriers, or any one of the carriers, but this is not the place or time to discuss that proposition."

In reply, we shall merely content ourselves, before passing to the next point, by saying that it is entirely clear to us that the Interstate Commerce Commission, when it made its findings and issued its certificates in its second decision (R. 139-40, 146-7, Appendix 3 and 4 to brief in reply to the brief of the Interstate Commerce Commission) acted in exact accord with the decision of this Court in the *Los Angeles Union Station Case,* 264 U. S. 331, 338, 341, 346, 347, 348. This Court, in our opinion, definitely decided in that case that it is incumbent upon the Interstate Commerce Commission to take action under the provisions of said Paragraphs 18 to 21, inclusive, of Section 1 of

the Act, *not* in a case in which the carriers were asking *permission* to act, but in a case in which public authority was undertaking to *require* them to act.

At page 36 of their brief, the carriers suggest that there is an inconsistency between holding that a *certificate* is necessary from the Interstate Commerce Commission and also an *order*. If the Commission has power to *order* the construction of a union passenger station, say the carriers, why is a *certificate* from the Commission also necessary? The answer is, of course, that this is merely one of the numerous cases in which administrative tribunals, both state and federal, are required by law to make certain *findings* or issue certain *certificates* before they make their *order*. The situation occurs too frequently and is to well known to justify the citation of statutes or authorities.

Referring now to Paragraph 21 of Section 1 of the Act, the carriers on page 37 of their brief quote from former Commissioner Hall of the Interstate Commerce Commission in connection with the Commission's first decision in the *Los Angeles Passenger Terminal Case*. We invite the Court's attention to the following two matters in connection with the quoted language:

1. The language is from a *dissenting* opinion in which only one other commissioner concurred; and

2. Mr. Hall's statement that the complaint of the City of Los Angeles is "ostensibly" a complaint under paragraph 21 was not warranted by anything in the record and was merely his per-

sonal opinion. The City relies much more heavily on other sections of the Act than on said paragraph 21 and in no event exclusively on said paragraph.

We do not agree with the contention of the carriers (Brief of Amici Curiae, pp. 38-39) that under said Paragraph 21 of Section 1 of the Act the Commission's authority is limited to requiring only such extensions of lines as may be incidental and essential to the furnishing of *car service* as defined in the Act, but do not consider it necessary to argue the matter here.

**2. Paragraph 3 of Section 3 of the Act.**

At pages 39 to 45 of their brief, the carriers refer to paragraph 3 of Section 3 of the Act. We have dealt with this paragraph quite fully in our brief in reply to the brief of the Interstate Commerce Commission, where we believe that the Court will find an answer to every substantial contention contained in the brief of the carriers on this subject. We shall refer here only to a few matters of relatively minor importance.

At page 40 of their brief, the carriers ask why, if we are correct in our reliance on paragraph 3 of Section 3 of the Act, did not the Commission make orders for the construction and operation of union passenger stations prior to the enactment of the Transportation Act, 1920? The answer is simple. Prior to 1920, this paragraph, which was then numbered 2, contained this language:

> "but this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

As it is almost impossible to imagine a union passenger station which does not, at least to some extent, involve the use by one carrier of the tracks or terminal facilities of another carrier, the Commission, as a practical matter, was without authority, prior to 1920, to direct the construction of union passenger depots. However, in 1920, the Transportation Act struck the above quoted words from said paragraph and thus this obstacle was removed.

We note, at page 40 of their brief, the admission by the carriers, that

> "Paragraph 4 (of Section 3) * * * does give the Commission express authority to order one carrier to share its existing terminal facilities with another under defined circumstances."

On page 40 of their brief, the carriers further say:

> "If the Commission has the jurisdiction claimed for it by appellant under paragraph 3 of Section 3, then the specified provisions of paragraph 4 of Section 3 relating expressly to existing terminals are unnecessary and superfluous, for the greater power conferred by paragraph 3 as so construed would include the less power given by paragraph 4."

Here, again, there is a simple answer to the perplexity of the carriers. Paragraph 4 deals with the use by one carrier of the terminal facilities *of another*

*carrier* and contains the important provision that in such case involving railroad property over which the Commission has jurisdiction the Commission may itself fix the compensation to be paid for the use of the property. But let us assume that land of a *third party* is necessary for the site of the union passenger depot. What then? Paragraph 4 does not apply in that event but paragraph 3 does apply. While it is true that paragraph 3 is in some respects broader than paragraph 4, there was also need for the provisions of paragraph 4 particularly with reference to the fixing of compensation by the Commission for the use by one carrier of the terminal facilities of another carrier.

We note the statement at page 42 of the carrier's brief that

> "This paragraph 3 deals with the interchange of traffic and of passengers between lines of railway."

That is our contention.

At page 45 of their brief, the carriers say that the interchange of passengers at Los Angeles has ceased to be suggested as a possible basis for the Commission's jurisdiction to order a new union station. We believe that this statement, which is absolutely without foundation in fact, was inserted by inadvertence. The City has always relied and now relies strongly on the interchange of passenger traffic in Los Angeles as a basis for the construction and operation of the proposed union passenger station. The Court is re-

spectfully referred to Paragraphs XVI and XVII of the petition for the writ herein (R. 22-4).

**3. Paragraph 4 of Section 3 of the Act.**

At pages 45 to 51 of their brief, the carriers make what seems to us, in all kindness, to be a very strained and technical argument for the purpose of showing that Congress did not mean what it seems to us it most clearly said when, in adding Paragraph 4 to Section 3 of the Act in 1920, Congress provided that

> "it (Interstate Commerce Commission) shall have power to require the use of any such terminal facilities, including main-line tracks or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, * * *."

At page 50 of their brief, the carriers concede that their contention is contrary to the decision of the Interstate Commerce Commission in *Hastings Commercial Club v. Chicago, M. & St. P. Ry. Co.*, 69 I. C. C. 489.

Their argument is also contrary to the action taken by the Interstate Commerce Commission when it issued its certificates in its second decision in the *Los Angeles Passenger Terminal Case* (142 I. C. C. 489, R. 128, 146-7).

This contention of the carriers is also contrary to the decision of this Court in the *Los Angeles Union Station Case*, 264 U. S. 331, which decision was, in

this respect, carefully followed by the Interstate Commerce Commission in its second decision.

The *facts* bearing on Paragraph 4 of Section 3 of the Act are fully set forth in Paragraph XVIII of the petition for the writ herein (R. 25-26) and are conceded by the Interstate Commerce Commission to be true. These facts have been fully discussed in our brief in reply to the brief of the Commission, on file herein.

Under the circumstances, we do not consider it necessary to give further consideration to the argument of the carriers on this point.

**4. The Vacuum.**

At pages 51-58 of their brief, the carriers urge that the mere fact that the Transportation Act, 1920, took from the states certain powers with reference to the construction and operation of union passenger stations and appurtenances does not necessarily and automatically delegate these same powers to the Interstate Commerce Commission. The carriers urge that it is at least possible that Congress may have taken such powers away from the states without, at the same time, conferring them upon the Interstate Commerce Commission or any other federal authority, thus leaving no public authority, either state or federal, in a position to regulate the carriers in these respects.

It is, of course, true that such situations at times arise but it is likewise true that the law abhors a

vacuum and that every intendment is against a situation in which all public authority is helpless to regulate common carriers in a matter so important and vital, in the public interest, as the construction and operation of union passenger stations.

What this Court thinks of such a contention appears in its recent decision of January 3, 1928, in *Cleveland, C. C. & St. L. Ry. Co. v. United States,* 275 U. S. 404. In that case, the Big Four first convinced the Supreme Court of Illinois that the jurisdiction with reference to certain railroad trackage was in the Interstate Commerce Commission and then, when the case came before the Interstate Commerce Commission, insisted that the Commission had no jurisdiction because of a certain finding of the State court. The railroad was quite obviously playing both ends against the middle. Referring to this situation, this Court, speaking through Mr. Justice Brandeis, said (p. 412):

> "The Big Four having, thus, convinced the State court that the order of the State Commission was void because the order is one within the jurisdiction of the Federal Commission, insists now that the latter can not act because of the State decision. * * * The declaration of the State court that the track which the Federal authority determines is private, shall be deemed public, can not affect the validity of the order of the Interstate Commerce Commission. *If it could, construction by the railroad of the switch connection with the shipper's track would not be compellable under either State or Federal law.* Compare *United States v. New York C. R. Co.,* 272

U. S. 457, 469, 71 L. ed. 350, 352, 47 Sup. Ct. Rep. 130."

In the present case, this Court apparently is not of the opinion that a vacuum has been here created, as appears from the fact that in the *Los Angeles Union Station Case,* after holding that the State of California is no longer in a position to exercise certain authority in the premises, the Court proceeds to point out just how and to what extent the Interstate Commerce Commission is to act in the matter.

There is no vacuum here. When Congress, in 1920, amended paragraph 3 of Section 3 of the Act and added paragraph 4 of Section 3 and also paragraphs 18 to 21, inclusive, of Section 1, it conferred ample authority upon the Interstate Commerce Commission to do every act prayed for by the City of Los Angeles.

This Court, in our opinion, was clearly of this same opinion when, in concluding its decision in the *Los Angeles Union Station Case,* 264 U. S. 331, 347-8, the Court said:

> "We were advised by statements at the bar after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an *order* to provide, maintain, and use a union station; that a hearing followed, and that, pending the decision in this court, the matter is held under consideration.
>
> *"For the reasons given, we think the course taken by the City of Los Angeles was the correct one."*

**5. U. S. Supreme Court's Decision in Los Angeles Union Station Case.**

At pages 58-63 of their brief, the carriers make what seems to be an effort to construe away the decision of this Court in the *Los Angeles Union Station Case,* 264 U. S. 331.

At page 59, the carriers say:

> "Anything in the opinion about the Interstate Commerce Commission or its powers was said either *arguendo* or as *obiter dictum.*"

We believe that the argument of the carriers under this head has been sufficiently answered by our brief in reply to the brief of the Interstate Commerce Commission. In that brief we analyzed, as carefully as we were able to do so, this Court's decision and pointed out what we understand to be its significance.

We do not believe that any further comment on the argument of the carriers in this respect is necessary.

**6. Interstate Commerce Commission's Decision—Majority and Minority Opinions.**

At pages 63-66 of their brief, the carriers have made an analysis of the way in which the individual members of the Interstate Commerce Commission voted in connection with the Commission's first and second decisions in the *Los Angeles Passenger Terminal Cases.*

To our mind, the most significant fact in connection with these votes is that three members of the Commission, namely, Commissioners Eastman, Lewis and McManamy, who at the time of the first decision con-

curred in the view that the Interstate Commerce Commission does not have the jurisdiction to make the final *order* prayed for by the City of Los Angeles, had become convinced, by the time the Commission made its second decision, that their first view was in error and hence filed a separate opinion in which they held that the Commission has the authority urged by the City and should have made the final *order* as prayed for.

The Court is respectfully referred to the opinion of these three commissioners, the logic of which seems to us inescapable. The opinion appears in 142 I. C. C. 489, 500 and in the printed record herein at pages 140-145.

These three commissioners joined with all the other commissioners except one on the *merits* and concurred in the issuance of all the *findings* and *certificates* requested by the City and made and issued by the Commission in its second decision.

The question at issue resolves itself into whether, on the one issue of law now before this Court, namely, the Commission's jurisdiction to make the final *order* requested by the City, the *majority* or the *minority* of the Commission are correct.

For the reasons which we have stated, we respectfully submit that the *minority* was correct.

**7. Conclusion on Statutory Construction.**

We respectfully submit that Congress has delegated to the Interstate Commerce Commission full power

and authority to make the final order prayed for by the City of Los Angeles and that this is exactly what this Court meant when, in the *Los Angeles Union Station Case,* 264 U. S. 331, 347-8, it said that

> "we think the course taken by the City of Los Angeles (in filing with the Interstate Commerce Commission its petition asking for an *order* to provide, maintain and use a union station) was the correct one."

Dated: October 28, 1929.

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Due service and receipt of a copy of the within brief is hereby admitted this.....day of October, 1929.

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*Amici Curiae on behalf of Southern Pacific Company, et al.*

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IN THE

# SUPREME COURT

OF THE

# UNITED STATES.

OCTOBER TERM, 1929.

No. 54.

Interstate Commerce Commission,
*Petitioner,*

*vs.*

United States of America, at the Relation of The City of Los Angeles,
*Respondent.*

## Brief of Amici Curiae on Behalf of Southern Pacific Company, Southern Pacific Railroad Company, Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company.

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*Respondent.*

**Brief of Amici Curiae on Behalf of Southern Pacific Company, Southern Pacific Railroad Company, Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company.**

This brief is tendered by friends of the court who are members of the bar of the court and who were attorneys for the above-named carriers in the proceedings before the Interstate Commerce Commission, out of which the present proceedings arose. These carriers are therefore directly interested in this proceeding, and it is a subject of general interest, and so we submit our argument on two propositions:

First: That the Congress cannot confer on the Commission jurisdiction to do what the City seeks to have done.

Second: That the Congress has not attempted to confer such jurisdiction.

The Commission rests its case wholly on the latter proposition, not suggesting the first. We suggest it, not because we think that the case depends upon it, but rather to demonstrate that the construction of the law made by the Court of Appeals would require the solution of a delicate and difficult question of constitutional law.

A case arising out of the endeavor to compel the construction of a union station in Los Angeles was before this Court in *Railroad Commission v. So. Pac. Co.*, 264 U. S. 331. After the opinion was handed down in that case and after the Commission had rendered its opinion in these union depot proceedings, 100 I. C. C. 421, the state commission again entered an order commanding the railroads to establish a union station. Thereupon the railroads petitioned the Supreme Court of the state of California for a writ of *certiorari* to review this last action of the state commission and the writ issued. The carriers had hoped that the Supreme Court of the state would render judgment in that case and that the defeated party would endeavor to bring the proceedings again into this court, so that those proceedings and the constitutional questions there involved might be before this court and possibly consolidated with the present proceedings for a final determination of all the questions involved.

But the Supreme Court of the state upon the handing down of the opinion in these proceedings by the Court of Appeals of the District of Columbia, set aside the submission of the case, and took it off the calendar pending the final determination of this case in this court.

N. B. Figures in brackets refer to pages of transcript except where context indicates a different reference.

## STATEMENT.

The gist of the petition for mandamus is in the twelfth paragraph [12-13], where it is alleged that the City filed a complaint with the Commission, and where, by reference to Exhibit A [29], that complaint is made a part of the petition. Manifestly the jurisdiction of the Commission and the correctness of its ruling as to its jurisdiction must be determined upon the record which was made before the Commission. It is, therefore, necessary to examine the complaint filed with the Commission and also the petition for final order [115-128] to ascertain, if possible, whether or not a case within the competence of the Commission was presented.

That complaint was a printed document of 167 pages, together with certain maps and diagrams. All but some 30 pages consisted of exhibits, made part of the complaint by reference and not reproduced in the record here.

That complaint alleges in paragraph II [2] that each of the defendants is a common carrier by rail engaged in interstate as well as intrastate commerce and doing business in and out of and through the City of Los Angeles. The lines of railway are shown on a map made a part of the complaint [28-29]. This map shows that the

existing Southern Pacific passenger station is about one mile from the site proposed for the union station; the Salt Lake terminal about the same distance from that site, and that the Santa Fe passenger station is a somewhat less distance from the same site. It is alleged that the Salt Lake depot is inadequate, that the Santa Fe depot provides scant facilities. It is not alleged that the Southern Pacific depot is in any wise inadequate, but it is alleged that the use of that depot "does not conform to any satisfactory plan for the elimination of the dangerous railroad grade crossings on said Alameda street and elsewhere" [32, 33]. And that quotation is substantially a repetition of a statement made in the opinion of the California Railroad Commission in its decision No. 9338, 20 Opinions and Orders 937.

All these passenger terminals lie southwardly from the proposed site, which is on the west side of the Los Angeles River, on the same side with the Southern Pacific and Santa Fe stations, while the Salt Lake station was on the east side of the river. We say "was" because after the complaint had been filed, and before the petition for final order was filed, the Salt Lake station was damaged by fire, and since that time that line has been temporarily using the Southern Pacific station [5, 108]. There is an allegation [9] that at a certain hour of the day the patrons of the two lines overcrowd the concourse of the Southern Pacific station. But there is no allegation anywhere that the station is not ample for the business of the Southern Pacific alone. See also page 60.

Main tracks of the Santa Fe lie near, but not on the site of the proposed station. In order that Santa Fe trains might enter the proposed station shown on the

diagram [128-129], that company would have to lay trackage into the station from its main tracks along the west bank of the river near Aliso street; the Salt Lake must either enter the station by bridging the Los Angeles River near Aliso street or must arrange with the Santa Fe to use the latter's trackage in and out of the station from some point south, probably Hobart Junction, about four miles from the proposed station, and from near Broadway bridge south to the station, a distance of about one mile. The Southern Pacific must take its north and south trains from a point near the Broadway bridge to and from the station on new tracks or must arrange with the Santa Fe to use about one mile of the latter's tracks. The Southern Pacific trains running between Los Angeles and El Paso must be deflected from Alhambra avenue east of river, and brought into the station on a bridge to be built near Aliso street.

The petition [25] assumes that joint use would be ordered or arranged for. We quote, adding in brackets a few distances:

> "That the carrying into effect of the union passenger depot order requested by the City of Los Angeles, as aforesaid, would require to a substantial extent the joint use of existing railroad terminal facilities in or adjacent to the City of Los Angeles, including the following uses:
>
> "The use by the Southern Pacific passenger trains from the north of the Santa Fe main line tracks on the west bank of the Los Angeles River from a point north of the Broadway viaduct as far south as Aliso street [one mile];
>
> "The use by the Salt Lake passenger trains from Pasadena of the Santa Fe tracks on the west bank of the river between the same points [one mile];

"The use by the Salt Lake passenger trains from the south of the Santa Fe tracks from Hobart Junction on the south to the site of the proposed union passenger depot on the north, a total distance of approximately three miles [four miles]; and

"The use by the Southern Pacific of the Salt Lake's tracks on the east bank of the Los Angeles River from Alhambra avenue southerly to Butte street and thence west over the Salt Lake's Butte street line to Alameda street" [four miles].

The program also includes the abandonment by the Southern Pacific of the operation of train service on Alameda street between College street on the north and 15th street on the south, approximately three miles [46].

The land on which the proposed station would be built is some 37 acres in extent [25]. There are now no railroad tracks on it except the Southern Pacific tracks on Alameda street, which are not to be used and could not be used in connection with the proposed station. [Diagram, 128-129.] Nothing in the record before the Interstate Commerce Commission showed or tended to show that any of the land within the proposed site is, was, or ever had been dedicated to any public use, but a part of it is owned by the Southern Pacific Company, which is the lessee and operator of the railroad facilities of the Southern Pacific Railroad Company. The latter company owns no part of the thirty-seven acres above referred to. In the petition for mandamus [25] the part of the acreage owned by the Southern Pacific is denominated "railroad terminal land."

It is true, also that paragraph XXI of the petition [27] says:

"That whenever this petition contains an allegation on a question of fact or a reference to any

finding of fact made by the Interstate Commerce Commission or by the California Railroad Commission, such fact appears and is shown by the evidence in the record before the Interstate Commerce Commission in said Docket No. 14778."

The Commission in its answer [150-156] has not referred to the allegation that a part of the site is already "railroad terminal land." Otherwise we can find no allegation and no intimation anywhere in the record that in any paper or proceeding before the Interstate Commerce Commission was it ever alleged or attempted to be shown that one foot of the 37 acres was "railroad terminal land," whatever that phrase may mean. All that the state Commission could say was [104]:

> "A large portion of this particular site is already owned by the Southern Pacific Company."

Even this mere ownership is not mentioned by the Interstate Commerce Commission in its report in May, 1928 [128 to 147]. Nor was this fact of ownership mentioned in the city's petition for final order [115 to 128], except as that petition included as an exhibit a copy of the state Commission's opinion containing the language last above quoted.

So then what the Commission was asked to do, which it held that it had no jurisdiction to do, was this:

Order the three lines to dedicate to public use some 37 acres of land a mile from the present station of the Southern Pacific and the Salt Lake companies, and nearly a mile from the Santa Fe station; erect on that land a passenger terminal, including about four miles of tracks in the station yard, and buildings as shown on the diagram already referred to; build or get use of trackage

necessary to use this station, namely, joint use by the Southern Pacific of Santa Fe tracks about one mile in length; joint use of Santa Fe tracks by the Salt Lake some five miles in length; joint use by the Southern Pacific of Salt Lake tracks some four miles in length; build a bridge across the river to carry the tracks of the Southern Pacific and possibly the tracks of the Salt Lake, and maintain and operate the plant as a union passenger station, abandoning the existing separate stations. All at a cost of at least ten million dollars [137-8].

And it was *vis-a-vis* these facts that the Interstate Commerce Commission said in May, 1928 [139]:

> "The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the *elaborate facilities* sought to be required by us in the present case, is obvious." (Italics ours.)

## ARGUMENT.

### A.

CONGRESS ITSELF HAS NOT (AND, THEREFORE, CANNOT, DELEGATE TO ITS COMMISSION) POWER TO REQUIRE THE DOING OF WHAT THE COMMISSION WAS ASKED TO REQUIRE IN THESE PROCEEDINGS.

### I.

**The Provisions of the Fifth Amendment to the Effect That No Person Shall Be Deprived of Life, Liberty or Property Without Due Process of Law, and That Private Property Shall Not Be Taken for Public Use Without Compensation, Protect Corporations as Well as Natural Persons.**

Railroad tax cases, 13 Fed. 722 (746); Santa Clara v. S. P., 18 Fed. 385 (402); San Mateo v. S. P., 13 Fed.

145 (151); St. Louis S. W. v. U. S., 245 U. S. 136; Sinking Fund cases, 99 U. S. 719; Atlantic Coast Lines v. Riverside, 219 U. S. 186.

We understand that this proposition is not contested and we leave it without argument. The cases cited from reports of this court do not rule on the proposition but assume it to be true.

II.

**To Require These Carriers to Do What the City Demands of Them Would Be a Violation of the Provisions Above Referred to of the Fifth Amendment.**

Cases closely in point and decided under the Fifth Amendment are few. We shall use, for the most part, cases that turn on the corresponding provisions of the Fourteenth Amendment.

Penn. v. Mahon, 260 U. S. 393.

Suppose that Congress should pass a special act ordering these three railway companies to abandon their existing passenger stations in Los Angeles, create and maintain a union passenger station in that city, and build necessary trackage and use one another's tracks so far as needed to get in and out of the new station; ordering, also, the Southern Pacific to abandon train service on Alameda street, between College street and 15th street. On what theory of constitutional law could such an act be sustained? Of course, the only possible theory is that of an exercise of the police power; but that power has its limits although we may not be able to define them. In Penn. v. Mahon, 260 U. S. 393, the opinion contains the following:

> "The protection of private property in the Fifth Amendment presupposes that it is wanted for public use but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the Fourteenth Amendment (citing cases). When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States."

Manifestly a railroad which is now furnishing proper, adequate, convenient and sufficient station facilities cannot be required to tear down its station and erect another one merely because Congress might think the latter would be preferable.

Vicksburg v. La., 160 La. 1028.

Manifestly, also, a railroad cannot be required to provide an airport adjacent to its station even though Congress might think that this would greatly convenience the public. For this would be to compel the railroad to render a service which it has not undertaken to render. It would be a taking of private property for public use without compensation. So, too, even though the existing station facilities of a railroad be inadequate, this does not empower Congress to compel it to build a new station, at a new location, apart from its existing line of railroad, for this would also be requiring it to render a service which it has not undertaken to render.

The soundness of a claimed rule of law frequently may be tested by assuming its application to a concrete case. Let us then consider the case of the Santa Fe. It has a terminal in Los Angeles city. Its station buildings are

inadequate. Its terminal site is concededly adequate. Therefore Congress may compel it to provide adequate and convenient station facilities at its terminal site. But Congress cannot compel it to provide station facilities at San Fernando, in the northern part of the City of Los Angeles, and some fifteen or twenty miles from the Santa Fe's existing line; for the Santa Fe has not undertaken to render that service. No more can it be compelled to provide terminal facilities at Venice, or at Hollywood, merely because those communities happen to lie within the municipal corporation known as the City of Los Angeles, although several miles from any Santa Fe rails.

In other words, when a railroad establishes its terminal in a given city, it does not thereby undertake to move that terminal to any other point within that city which will in the opinion of Congress advantage the public convenience.

It will doubtless be urged by the City that the carriers have dedicated their property to an adequate passenger service in the City of Los Angeles, and hence are subject to regulation of that service in the public interest under the police power. But we insist that when a carrier establishes a terminal at Boyle Heights, in the eastern edge of the City of Los Angeles, it does not thereby undertake to move that terminal to Hollywood, in the west end of the City, if Congress should be of the opinion that public interest would be advantaged thereby. Telephone case, 166 Cal. 640; Del Mar case, 167 Cal. 666; Atchison Company case, 173 Cal. 577; Hollywood case, 192 Cal. 307.

Now, it is apparent at the outset that the "undertaking to serve" of a steam railroad is materially different from

that of such public utilities as domestic water companies, gas companies and electric light companies. A steam railroad does not undertake to go to the homes and places of business of its patrons to serve them. It undertakes only to serve those patrons who come to it. This distinction is important. It was recognized in the Atchison case, 173 Cal. 577 (585), and in the Hollywood case, 192 Cal. 307 (312).

But the City may say: "You have undertaken to serve the people of the entire City of Los Angeles." We answer no. We have undertaken to serve only those people of the City who come to our station, upon our line of railroad. This limitation is inherent in the very nature of a steam railroad and the method of its operation. It cannot go to the homes of its patrons; a water company or a gas company must go in order to serve its patrons. A street railway, in this respect, is midway between the steam railroads on the one side, and the gas company or water company on the other. It partakes somewhat of the characteristics of each. Surely the undertaking of the street railway, which enters a community to serve its people, is broader and more comprehensive than that of a steam railroad. Yet the court did not hesitate to hold in the Hollywood case, *supra,* that the undertaking of a street railway cannot be held to extend beyond the limits of the franchises which it has applied for and accepted. If the undertaking of a street railway is limited to its franchises, surely the undertaking by a steam railroad cannot be held to extend beyond them. Yet not one of these carriers can comply with this order without applying for and obtaining additional franchises which it has never sought nor desired.

It will be said that the City is not seeking to compel carriers to move their terminals to a distant part of the City, but is seeking to move them only one mile. But whether it be a mile, or five miles, or twelve miles, the rule of law is the same. In either case, it is equally beyond the power of Congress because it is an attempt to compel the carrier to undertake a service which it has never undertaken to render. In the Hollywood case, *supra,* some of the extensions sought were only one-half mile in extent and involved only a relatively small expense of extending a street railway track along a public street. The court had no hesitancy in holding that the street railway company could not be compelled to make even this short and comparatively inexpensive extension because it had not undertaken to render this service. The removal of a railroad terminal one-half mile in the heart of a great city may be vastly more burdensome and oppressive than the twelve-mile extension sought in the Atchison Company case, 173 Cal. 577.

But the principle is the same in either case. Once you concede that public authority may compel a public utility to expend money, in any amount, however small, in a service which it has not undertaken to render, there is no place to draw the line and you have opened the door to unlimited confiscation of private property.

To order these extensions, and to order the acquisition of the new land necessary for rights of way and the union station site and to order the dedication of these lands to public use and the construction thereon of a union passenger station building and some four miles of trackage, is confiscation of the property of the railroad companies and their several shareholders. It is not pre-

tended that any compensation is to be given to them for the forced investment of so great an amount of capital in such new enterprise, the carriers being left to such remuneration as they may be able to secure from rates they may be able to have established and to collect.

In the case of Pac. T. & T. Co. v. Eshleman, 166 Cal. 640, the court said at page 686:

> "It therefore stands admitted, as indeed it must, that for the taking no compensation whatsoever is made. And, of course, it cannot be contended and is not contended that an apportionment of rates or tolls for a service to be rendered in the future is a compensation for the present taking of property, and as little can it be said that the allocation of such rates and tolls to be earned in the future can ever measure up to the constitutional requirement that property shall not be taken without compensation first made and paid to the owner."

In the Hollywood case, 192 Cal. 307, the court said at page 310:

> "We entertain no doubt that neither the Railroad Commission nor any other governmental agency possesses such power."

As was said in Pac. T. & T. Co. v. Eshleman, 166 Cal. 640, at page 665, it may not be amiss to point out that devotion to a public use by a person or corporation of property held by them in ownership does not destroy their ownership and does not vest title to the property in the public so as to justify, under the exercise of police power, the taking away of the management and control of the property from its owners without compensation, upon the ground that public convenience would better be served thereby, or that the owners themselves have proven false or derelict in the performance of their public duty.

In his concurring opinion, in this Union depot case, when it was before the state court, in Atchison v. California Railroad Commission, 190 Cal. 214, Chief Justice Shaw said, at page 228:

> "Entirely new tracks will have to be built to reach the new depot, and the land on which it is to be erected and on which the track is to be built will have to be acquired by the said companies, or by some subsidiary company in which they are all interested, and vast sums of money must be used in constructing the buildings and tracks required for the union depot. If this be true, it is equally beyond the power of the Interstate Commerce Commission to make the order. To require the railroad companies to construct this depot and the tracks necessary therefor is equivalent to ordering them to dedicate new property to a public use. I know of no power which will justify the state in commanding a railroad company to thus acquire and dedicate property to a public use."

Chief Justice Shaw's opinion in that case was followed by the same court in the Hollywood case, 192 Cal. 307.

The absolute duties of the carriers are limited to the furnishing of reasonable and adequate facilities to their several patrons. If a station is too small a railroad may be required to enlarge it. If a station burns down a railroad may be required to replace it. These are matters within the realm of the police power. These are but the carrying out of obligations incurred when the railway entered the field of its activity; but to require a railroad company to abandon its own adequate facilities and go elsewhere than on its own property and acquire additional land and construct new facilities to be used jointly by itself and another railroad company is outside the realm of regulation and is an infringement upon the constitutional right of the carriers.

The appellant seeks not to compel the carriers to make adequate facilities that are now inadequate, but requires abandonment of adequate facilities, at least, so far as the Southern Pacific Company is concerned. In Vicksburg v. Louisiana, etc., 160 La. 1028, which was an appeal from a judgment enforcing an order of the Commission requiring the erection of a new depot, the evidence showed that the existing depot was adequate although unsightly and not modern. The court, in a concise and clear opinion, held that the Commission had exceeded its jurisdiction.

It is recognized by the courts that there is a clear distinction between power to regulate and the right to manage. The management of the business of a corporation is a matter which must of necessity be left to the business sagacity of the owner if the corporations are to survive. It is clearly recognized that as long as such property is to be held in private ownership with the incidental risks attached to its use in the business, the right of management must remain incident to the ownership and does not pass to the government. Otherwise, the government would secure for the public benefit all the advantage of ownership without the incidental risk.

Even when the charter of a railroad corporation empowers it to make extensions into territory which it has not seen fit to enter, neither the state nor the Federal Government can compel such extension, for it is strictly a matter to be determined by the directors of the company whether it would be advisable; and as to the cost, feasibility, and advisability of raising the necessary capital for investment in the proposed venture. This was recognized and clearly stated in Towers *et al.* v. United

Railways, 126 Maryland 478. In that case it appeared that a street railway company had the right under its franchise to build the extension sought, but had never exercised that right. The Public Service Commission ordered the extension, basing its order "upon an obligation arising under the appellee's profession and undertaking to serve the territory designed to be served by the proposed extension, and upon its finding of fact that the extension would be remunerative to the appellee." The Supreme Court of the state granted relief to the railway company, and this decision was affirmed by the Court of Appeals of Maryland.

In People v. Stephens, 197 N. Y. 1, it was said that the commissioners could not assume the position of financial managers or substitute their judgment for that of the directors of the company. That case involved a refusal of the Commission to permit the issuance of securities for the purchase of railroad property which constituted an addition or extension to its existing service, but the principle involved is the same as in the present case, namely, that the question of the advisability of the issuance of securities for additions or extensions to service is primarily a matter for the judgment of the owners and directors of the company. The court in that case said at page 10:

> "We do not think the legislation alluded to was designed to make the Commissioners the financial managers of the corporation, or that it empowered them to substitute their judgment for that of the board of directors or stockholders of the corporation as to the wisdom of a transaction, but that it was designed to make the Commissioners the guardians of the public by enabling them to prevent the issue of stock and bonds for other than the statutory purposes."

The case last cited was quoted in the case of *People v. Stevens, etc.*, 203 N. Y. 7, where the court said at page 19 in regard to the powers of the Public Service Commission that its discretion could not override the discretion of the officers of the company in the management of its affairs or the provisions of the statute which prescribe the cases in which securities are permitted.

These authorities sustain, we submit, the proposition that the matter of investment of new money in additional enterprises is strictly a matter of corporation business policy to be left to the sound discretion of the directors, and may not be compelled by any governmental agency.

The jurisdiction of the regulatory bodies is limited to the regulation of enterprises in the public use to which the owner has itself dedicated the property. The courts have repeatedly held that the powers of railroad commissions are limited to regulation. Therefore a railroad line or extension, or a union station must be constructed before there is an object upon which this function of regulation may operate.

This limit on the powers of governmental agencies was pointed out in *Pacific Telephone etc. Co. v. Eshleman*, 166 Cal. 640. The court said at page 663, after stating that there are certain fundamental principles governing the exercise of the police power:

> "The first of these is that this power goes merely to the *regulation* of the public utility and that when an order passes beyond proper regulation it amounts to a taking of the property, and the order is then referable not to the police power but to the power of eminent domain."

The court further says at page 665:

> "This principle, it is to be noted, is not that the Legislature, acting directly or through its authorized mandatories, may not subject property devoted by its owners to a public use to another public use, or to the same public use by its rivals, but that the doing of this is an act referable to the power of eminent domain and not to the police power and that compensation must be made accordingly. Herein lies the vital distinction between the legitimate exercise of the police power and the exercise of the power of eminent domain. In the former, uncompensated obedience to the order is imperative. In the latter, the order may not be enforced without compensation first made. And, finally, it may not be amiss to point out that the devotion to a public use by a person or corporation of property held by them in ownership does not destroy their ownership and does not vest title to the property in the public so as to justify, under the exercise of police power, the taking away of the management and control of the property from its owners without compensation, upon the ground that public convenience would better be served thereby, or that the owners themselves have proven false or derelict in the performance of their public duty. Any law or order seeking to do this passes beyond the ultimate limits of the police power, however, vague and undefined those limits may be."

Therefore, we submit that the government is without power to order or compel the carriers and their stockholders to procure, say, ten million dollars and dedicate the same to public use extending their main lines and entering upon a traffic which they have no desire to undertake.

It will doubtless be urged that as the City has expressed a willingness to give the necessary franchises and permits therefore the railroads may be compelled to ask and

accept them; that if the railroads may be required to exercise the power of eminent domain to obtain necessary land for needed facilities, then they may also be compelled to acquire or accept such franchises as may be necessary for needed facilities. But the same fallacy which we have pointed out underlies this argument.

We admit that if the Santa Fe station building is too small for the proper accommodation of its patrons, the company may be compelled to enlarge its building, although in order to make such enlargement it might have to acquire new land in one way or another. But that is not to say that the company may be compelled to remove its station to a point not on its line, and acquire the permits or franchises necessary to accomplish such removal.

In the *Hollywood* case, *supra*, the decision went to the effect that an order compelling extension and service in a field not embraced within the limits of the enterprise of the carrier and not within the limits of its franchise was void and non-enforceable. In this respect steam railroad corporations are not essentially different from street railroad corporations.

The routes of steam railroads are to be set forth in their articles of incorporation under the state law of California. *California Civil Code,* Sec. 291 [Appendix 1]. Upon incorporation the company has the right to construct its railroad as defined in its articles. *California Civil Code,* Sec. 465, subdiv. 4 [Appendix 2]. It has the right to cross any public highway in California, Sec. 465, subdiv. 5 [Appendix 3], outside of incorporated cities or towns, Sec. 470, *California Civil Code* [Appendix 4]; in incorporated cities and towns under the limitations

placed by Sec. 470, no construction can take place without the grant of franchise by a two-thirds vote of the city authorities—that is for crossing or use of streets. The granting of a franchise always presupposes an application therefor by the one who would exercise the franchise. Therefore, whether or not a railroad corporation possesses franchise in any municipality in California becomes an important factor in ascertaining the extent of the company's obligation to serve the public. If the company does not hold a franchise allowing it to voluntarily construct extensions, there is no justification for saying that the company had impliedly undertaken to extend its line whenever it should become desirable from the standpoint of the government agencies—see *Hollywood v. Railroad Commission,* 192 Cal. 307 at page 313.

To create the proposed station several franchises will have to be secured by all petitioners. The Santa Fe will have to secure a franchise to cross Dominguez street, Commercial street, Aliso street, Center street, Vignes street and Lyon street. The Southern Pacific and Salt Lake roads will have to secure a franchise to cross the Los Angeles River, Center street, Vine street and Lyon street. The Southern Pacific will have to acquire a franchise for the relocation of Alameda street between Aliso and Los Angeles streets. And perhaps all of the carriers will have to acquire franchises to cross other streets at other locations, depending upon how it should be determined that access could be obtained to the proposed station site. *Session Laws of California,* 1925, page 1024 [Appendix 5]; *Constitution of California,* Section. 19, Article 11 [Appendix 6].

We submit that no governmental agency has authority to make any lawful order requiring railroad companies or their officers to apply for franchises or privileges which those corporations and their officers do not desire to exercise. As said in the *Hollywood* case, *supra,* the franchise rights of a street railroad are important in ascertaining the extent of the company's obligation to serve the public because they represent the authority which the company has asked for and obtained from the municipality—but where, as in the present case, the company does not hold franchises allowing it to voluntarily construct these extensions, there is no justification for saying that the company has impliedly undertaken to extend its line whenever it should become necessary.

So we say that the thing sought to be required here is beyond the absolute duty of the corporations. *O. W. R. & N. v. Fairchilds,* 224 U. S. 510 (529). In the *Hollywood* case the court announced the following conclusion:

> "We conclude, therefore, that Section 36 of the Public Utilities Act (Statutes of 1915, page 115), in so far as it seeks to confer jurisdiction upon the Railroad Commission to order a street railway company to extend its lines into a new territory in which it has no franchises, is ineffective for that purpose and to that extent void."

*Michigan, etc. v. Duke,* 266 U. S. 570, is analogous. This case involved the question whether the state might impose the duties and liabilities of a common carrier upon one engaged in performing a contract to transport merchandise for one manufacturer over the public highways from a plant within a state to a destination in another

state. The final paragraph of the syllabus, which is virtually a quotation from the opinion, says:

> "The conversion by a legislative fiat of property used exclusively in the business of a private carrier into a public utility and declaring the owner a public carrier is an unconstitutional taking of private property for public use without compensation."

## III.

## Opinions of State Courts Which Have Been Cited as Contra to Our Position Are Either Not in Point or Are Contrary to Decisions of This Court.

Even a cursory examination of the opinion in the *Civic Center* case, 175 Cal. 441, will show that the sole question considered and the sole question decided there was the question of jurisdiction over grade crossings as between the State Commission and the City of Los Angeles.

In *Union Station* case, 190 Cal. 214, it was not decided that except for the taking away thereof by the Transportation Act of 1920, the State Commission would have had the requisite authority to require these carriers to erect a union station. The petitioners in that case made two main contentions—first, that by the enactment of the Transportation Act of 1920 Congress had so occupied the field as to exclude the states from any power or control over union stations of interstate railroads, extension of lines, abandonment of operation, and use by one carrier of another's main line tracks; and, second, that an order requiring the erection of a union station where it would necessitate the extension of main line tracks, abandonment of operations and of adequate terminal facilities, acquisition of new property and dedica-

tion thereof to the public, was in excess of the police power and therefore was not within the power of any governmental agency. Manifestly a decision of either of those questions in favor of petitioners would determine the case and require the annulment of the Railroad Commission's order. The California court elected to consider and determine the first of these questions. The determination thereof favorable to the petitioners rendered unnecessary consideration of the remaining questions, as the court pointed out in saying, "This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein." 190 Cal. 227.

Mr. Chief Justice Shaw, in a concurring opinion, indicated that in his view the petitioners were equally correct in their second contention. And in the *Hollywood* case, 192 Cal. 307, the court in banc cited and adopted Chief Justice Shaw's language with unqualified approval.

*Railroad Comm. of Alabama v. Alabama etc.,* 182 Ala. 357, was a suit by a carrier to enjoin the enforcement of an order requiring the construction of a union station. Evidently the proposed station was located at a point where three railroads converged and the order therefore did not involve the question of the power to compel an extension of lines by any carrier. At any rate, the question whether a carrier can be compelled to extend its tracks for a union station was not discussed or mentioned therein.

In *Railroad Comm. of Alabama v. Alabama etc.,* 185 Ala. 354, the question which we are here considering was

not controverted and was not discussed. The power of the state to compel all railroads entering a given city to use a union station was conceded. The controverted question was whether the state could compel the railroads to jointly acquire the necessary land and jointly construct the building. The court said, "If the state has the power to which we have referred, *and that power seems to be conceded,* then it has the corresponding authority to put that power into exercise." (Italics ours.)

In *Mayor and Aldermen v. Norwich etc.,* 109 Mass. 103, the question here involved was considered and decided and that case is therefore in point here. But the reasoning of that decision will not commend itself to the court. The power of the state to compel a railroad to extend its tracks so as to reach a union station was predicated upon the reserved power to alter, amend or repeal its charter, and that conclusion is in direct conflict with the decision of this court in *Superior Water etc. Co. v. City,* 263 U. S. 125. It is therefore entitled to no weight whatever as authority here.

In answer to the argument that to require the railroads to expend money in extending their line for the rendition of a service which they had not undertaken to render would amount to a taking of property without compensation, the Massachusetts court said:

> "Their compensation for the outlay is in the tolls they received from travelers or others."

That this theory is unsound is clear from the argument and statement of the court in the *Telephone* case, 166 Cal. 640, where the court said, at pages 686-7:

> "And of course it cannot be contended and is not contended that an apportionment of rates or tolls for a service to be rendered in the future is a compensation for the present taking of property."

*Dewey v. Atlantic Coast Line,* 142 N. C. 392, is not in point here at all, for it was an action by a group of property owners to enjoin railroads from carrying out an order of the Commission to construct a union station, which order the railroads desired to obey. No further comment on that case is necessary.

*Griffin v. Southern R. Y.,* 150 N. C. 312, is another case of the same sort as the Dewey case and equally irrelevant here.

In *Corporation Comm. v. Seaboard, etc.,* 161 N. C. 270, the sole question reviewed aside from a procedural question was whether the validity of an order requiring two railroads to join in a union station could be attacked upon the ground that the erection of the station at the point designated would take away the business of a rival town. The case is not at all in point here.

The ruling in *Missouri Oil & Gas Co. v. State,* 29 Okla. 640, is rested squarely upon the authority of the Massachusetts case of *Mayor v. Norwich etc., supra,* which, as we have shown, is contrary to the decisions of this court and cannot be accepted as authority here. The Oklahoma court said that this Massachusetts case had been cited with approval in *Northern Pacific v. Dustin,* 142 U. S. 492, but herein the Oklahoma court was mistaken. The Massachusetts case was not cited there at all, and its doctrine was certainly not approved as the decision of this court was quite the opposite of the decision made by the Massachusetts court.

State v. K. C. Railway Co., 32 Fed. 722, is cited as authority by the Oklahoma court, but is entirely out of point. The Kansas City case related only to a union station at a railroad intersection and therefore did not involve the power of the state to compel a railroad to extend its line.

In *State v. St. Louis,* 165 S. W. 491, the question of the power of the state to compel a railroad to extend its lines in order to enter a union station does not appear to have been raised. At any rate, it is not discussed in the opinion.

*State v. St. Louis etc.,* 199 S. W. 829, is the same case at a later stage, and the same comment applies.

*Gulf, Colorado & Santa Fe v. State,* 167 S. W. 192, is not in point here, because it related to two intersecting railroads and the order of the Commission was construed by the court as requiring them to construct a union station at or near the junction of their lines of railroad.

*North Carolina etc. v. Southern,* 185 N. C. 435, concerned merely the validity of an order requiring two intersecting railroads to maintain a union station at the junction point. The question of the power of the state to compel an extension of lines was not involved therein.

*Chicago etc. v. State,* 90 Okla. 173, was a 4 to 3 decision affirming the power of the Commission to require railroads to construct a union station, but did not mention the point we are here considering other than by very general language. The majority opinion said that "the power in question was settled and established by a long line of decisions of this court, both upon the theory that the same was a proper exercise of its police power,

or of the right reserved to the Legislature to amend, alter or repeal the charter of said railroad." But, as we have pointed out above, this theory has been definitely rejected as unsound. The majority opinion in the Oklahoma case also criticized as unsound and refused to follow the decision of the California Supreme Court in the union station case, 190 Cal. 214, which was shortly thereafter affirmed by this court in *Railroad Commission v. Southern Pacific,* 264 U. S. 331.

In *State v. Jacksonville Terminal,* 71 Fla. 295, the court held to be void an order of the Railroad Commission requiring several roads and the Terminal Company to join in the erection of a new, better and larger terminal station upon a site apart from the site of the existing terminal station then in use. The court's conclusion on this point is correctly summarized in the last paragraph of the syllabus, as follows:

> "The statutes do not confer upon the Railroad Commissioners any power that may fairly be regarded as authorizing the Commission to make an order requiring the local terminal company and the railroad companies that are its patrons jointly to change the location of the terminal company's depot or terminal."

It is but fair to add, however, that the court does say in the course of its opinion:

> "There is authority to compel the railroads entering the city to erect, operate and maintain a joint passenger terminal or union depot, even though the effect of such order would be to require the railroads using the present terminal depot to withdraw from it."

That statement, however, was pure *obiter dictum.*

In State *ex rel.* R. R. Commissioners v. Atlantic Coast Line, 67 Florida 441, the constitutional limitations are not discussed.

In Missouri etc. v. State, 38 Okla. 401, no constitutional question seems to have been raised, discussed or decided.

We have now reviewed briefly all of the state cases relied upon heretofore by the City as supporting its claim of power to compel a railroad to extend its main line tracks for the purpose of joining in a union station at a point apart from its existing tracks. Of the cases cited by the City in this connection all but six did not involve this question, and are therefore not in point. Of the six remaining cases, three are in point. In these the courts of Massachusetts and Oklahoma affirmed the existence of this power upon the ground that it is comprised within the reserved power to amend, alter or repeal charters, a theory which has been rejected as unsound by this court and which would in any event be a matter for the exertion of state power and not of federal power where the power to alter or amend the charter is reserved by the state and not by the federal government. In the three remaining cases, the Supreme Court of Alabama and the intermediate court of Texas have assumed the existence of this power, either because it was expressly conceded, or because it was not controverted in the case before them.

## IV.

## Cases Heretofore Cited by the City From the Reports of This Court Are Not in Point.

*Wisconsin etc. v. Jacobson,* 179 U. S. 287, involves only an order requiring two intersecting railroads to pro-

vide at the point of intersection facilities for the interchange of cars and traffic.

*Denver & Rio Grande v. City etc. of Denver,* 250 U. S. 241, is equally irrelevant.

Neither of these cases involve the joint use of main line or any line, the joint use of any facilities, the extension of main line, or the abandonment of lines.

It has been urged that argument on the Fourteenth Amendment was fully presented to this court in *Railroad Commission v. Atchison,* 264 U. S. 331, and that "it is the chief business of that tribunal to pass on just such contentions. If it be true that by reason of any provision of the Federal Constitution no public authority has any power * * * the Supreme Court of the United States would undoubtedly have said so."

On the contrary, our understanding is that this court seldom or never bases a decision on the Fourteenth or any other amendment to or clause of the Constitution if the case can be disposed of on other grounds. In the case just cited, the court found that it could readily affirm the judgment of the state court without solving any problem of constitutional law. What powers the State Commission might have exercised within the limitations of the Fourteenth Amendment would seem to be an academic question if, as we claim, Congress occupied the field by enacting the Transportation Act, 1920.

V.

**The Railroad Companies Have Not Admitted That the Interstate Commerce Commission Could Within the Limitations Imposed by the Fifth Amendment Be Vested With the Jurisdiction Which the City Claims That the Commission Possesses.**

Carriers are not parties to this proceeding, and it is probably of no importance what positions they take or

have taken in connection with the so-called Union Station proceeding.

In fact, both here and in the State Court we argued quite fully that under the limitations of that amendment the State Commission could not be clothed with jurisdiction to do just what the City here seeks to have the Interstate Commerce Commission do, and our argument as to the State Commission's lack of power under the Fourteenth Amendment applies equally to the possible extent of the Federal Commission's power under the Fifth Amendment. Our argument as to the State Commission's power was, first, lack of power under the Fourteenth Amendment; second, lack of power under the commerce clause and the Interstate Commerce Act, especially Transportation Act 1920. We have never admitted that the Fourteenth Amendment permits the state government or that the Fifth Amendment permits the federal government to force the carriers to do that which is the aim and end of this present proceeding.

## VI.

**We Therefore Conclude Our Presentation of This Case Under the Limitations of the Fifth Amendment as Follows:**

A public utility which has undertaken to render a public service can be required by the government in the exercise of its police power to expend money when necessary to render that service adequate, safe and convenient (subject, of course, to limitations not necessary to particularize here). The government may not require such a public utility to expend money in the rendition of a service other than or different from or in addition to that which

it has undertaken to render. A steam railroad does not undertake to go to its patrons. It undertakes only to serve those who come to it. The undertaking of a railroad in this behalf is defined by the location of its tracks and is limited by its franchise. To require a railroad, for the purpose of joining in a union station or for any other purpose, to extend its tracks to a point apart from its line, necessitating the acquisition of additional property and franchises would amount to a taking of private property for the public use without compensation, a deprivation of property without due process of law, and a denial of the equal protection of the law.

B.

THE CONGRESS HAS NOT ATTEMPTED TO DELEGATE TO ITS COMMISSION THE POWER TO DO WHAT THE CITY ASKED THE COMMISSION TO DO.

I.

**The Act to Regulate Commerce Must, if Possible, Be So Construed As to Avoid a Difficult Constitutional Question, Namely, the Question of Power Under the Limitations of the Fifth Amendment.**

This is a well-known rule repeatedly applied by this court. The most frequently quoted statement of it is that made by Mr. Justice White in *United States v. D. & H. Co.*, 213 U. S. 366 (408):

> "Where a statute is susceptible of two constructions by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." Citing Harriman v. I. C. C., 211 U. S. 407.

The rule was repeated and followed in *United States v. Standard Brewery*, 251 U. S. 210, where Mr. Justice Day quotes as follows from the case of *United States v. Moy:*

> "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubt upon that score."

In *Texas v. Eastern Texas*, 258 U. S. 204, the court at page 217 quoted the rule as stated in *United States v. D. & H. Co.* The same rule has been quoted and followed scores of times by other federal courts and in the state courts.

II.

**Paragraphs 18 to 20 of Section 1 of the Act to Regulate Commerce Do Not Confer Upon the Commission Any Such Power.**

Those paragraphs are permissive in character and not compulsory. They were drafted and enacted not in order to compel extensions of lines, but for the purpose of preventing unnecessary and uneconomical extensions. We do not think that the Commission had any authority or jurisdiction to issue any certificates because they were not asked for by the carriers, or any one of the carriers, but this is not the place or time to discuss that proposition. Their permissive character, however, is brought out in *Texas v. Gulf*, 270 U. S. 266, where Mr. Justice Brandeis, at page 272, announcing the opinion of the court, says:

> "Paragraphs 19 and 20 provide that a carrier desiring to construct one (an extension) may apply for a certificate and prescribe the method of proceeding. * * *"

And again the same Justice, in *Cleveland v. United States*, 275 U. S. 406, said at page 408:

> "These paragraphs (18 to 21) relate to the construction, acquisition, extension and abandonment of a railroad. They deal primarily with rights sought to be exercised by the carrier."

It would be inconsistent to hold that the issuance of such certificate is necessary and at the same time to hold that the Interstate Commerce Commission has jurisdiction to *order* all these works to be done, for if the Commission has power to order the things to be done, there is certainly no occasion for issuing any certificates permitting them to be done. It would be as if a man should say to his small son, "You may go to school this morning, Johnny, if you like," and at the same time tell him that he must go to school whether he like or not.

III.

**Paragraph 21 of Section 1 Is Not a Source of the Asserted Jurisdiction.**

This paragraph has been discussed in that connection at other times and in other places, and with reference thereto we desire to say that when Congress delegates power, or whenever any Legislature delegates power, the delegating body lays down the rule by which the power delegated is to be exercised.

> "When a subject requires legislation for the regulation of future conduct, but the objects of it are so diffuse and variable that they cannot be distinctly apprehended and comprised in the ordinary terms of legislative classification, it is not unusual to prescribe general rules if such do not already exist, and delegate the power to apply those rules to the

varying circumstances which may arise and give occasion for control." *Louisville etc. v. I. C. C.*, 184 Fed. 118, at p. 122.

So the Commission must find in the Act not only a grant of power to require the extensions of lines, but must find also in the Act some general rule as to when and how that power shall be exercised. In other words, it cannot be held for a moment that the Commission has been given *carte blanche* to require existing railroad companies to build— that is, to extend their lines anywhere and everywhere. They can only be required to build or extend their lines in those cases in which Congress has said that they must extend the line. The Commission is to determine in a given case whether the facts impose the duty under the law. As the Commission itself said, the power of the Commission to adjudicate complaints brought before it extend only to such acts or omissions of common carriers as are in contravention of the provisions of the Act to Regulate Commerce. *Lunham v. Railroad Co.*, 48 I. C. C. 611.

In the report made in the *Union Station case*, 100 I. C. C. 421, Mr. Commissioner Hall said, at page 461:

> "Possibly their complaint should be regarded as an application under paragraphs 18 to 20 of Section 1, although I do not think so. Ostensibly it is a complaint under paragraph 21."

And a little later, at page 462, he said:

> "It is only in paragraph 21 that the power to require appears, and there it is confined to car service as the term is used in the Act, and to extension of carriers' lines."

At page 426 the Commission had said that the term "car service" as used in the Act, "relates to *vehicles* used in the transportation of *property*. The authority to require a carrier to extend its line may include authority to require it to construct stations necessary and incidental thereto." The word "thereto" in this sentence seems to refer to car service. The Commission said further, on the same page:

> "We conclude that paragraph 21 does not empower us to order the construction of a union passenger station where, as here, the station would be the principal thing and the extension of lines the incident."

Where paragraph 21 authorizes the Commission to require carriers to provide themselves with safe and adequate facilities for performing car service, we have a definite statement by which to measure the power of the Commission. The Commission is given power to enforce the provision relating to car service, and that term is defined in the Act. Now when the Commission is given in paragraph 21 the further power to require the carriers to extend their lines, it can only be exercised in order to require carriers to perform some duty imposed upon the carriers by some provision of the Act. That is all the power that the Commission has in any case, but we must look elsewhere to ascertain what duties are imposed upon carriers with respect to the extension of their lines. So far as paragraph 21 is concerned, the reading of it would clearly indicate that the extension of lines there referred to was such an extension as might be necessary to the fulfillment of the duties respecting car service, and we take it that paragraph 21, by its terms when properly construed, gives the Commission authority

to require only such extension of lines as may be incidental and essential to the furnishing of car service as defined in the Act.

## IV.

### The Commission Has No Authority Under Paragraph 3 of Section 3 of the Interstate Commerce Act to Order the Carriers to Construct a Union Passenger Station.

In paragraph IV of the petition for final order [115] filed by the City of Los Angeles, it is urged that the Commission has authority to order the carriers to construct a union passenger station under this paragraph. And, indeed, it is the only one referred to as the basis of jurisdiction in that petition for final order.

The position of the City seems to be that by virtue of the amendment made by the Transportation Act, 1920, the Commission now has authority to make such an order, but did not possess such power theretofore. The particular language of the section relied upon reads as follows:

> "All carriers * * * shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith."

As a matter of fact, however, this language was not changed by the amendment of 1920. The only important change in paragraph 3, which was paragraph 2 prior to the amendment, was the elimination of the clause reading, "But this shall not be construed as requiring any

such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." The reason for this elimination is obvious. Paragraph 4 of the same section was added by the Transportation Act of 1920, and does give the Commission express authority to order one carrier to share its existing terminal facilities with another under defined circumstances. The clause in question had to be eliminated from the old paragraph 2, now paragraph 3, in order to make the latter harmonize with the new paragraph 4.

In cases before the Commission and the courts involving paragraph 3, the question at issue was the power of the Commission to issue an affirmative order requiring a carrier to construct a track connection with another carrier and to interchange business with other carriers, and it was held that the section of the Act under consideration did clothe the Commission with authority to make orders of this character. It is a far cry, however, from ordering a carrier to construct a track connecting up existing facilities to ordering the construction of a new union station costing several million dollars and requiring joint use of several miles of main line.

If the Commission has the jurisdiction claimed for it by the City under paragraph 3 of section 3, then the specific provisions of paragraph 4 of section 3 relating expressly to existing terminals are unnecessary and superfluous, for the greater power conferred by paragraph 3 as so construed would include the less power given by paragraph 4.

The paragraph doubtless confers on the Commission authority to require a connection to be made between two railroad lines, but that is very far from saying that it

confers power on the Commission to require one carrier to grant to another trackage rights or the right to operate cars and trains over the other's lines, and certainly there is no specific provision in the paragraph that the Commission shall have power to require the construction of union stations.

It has been urged that in these proceedings, as reported in 100 I. C. C. 421 (427), the Commission expressly *assumed* that this paragraph makes it the duty of carriers to maintain union station facilities. Certainly the Commission did not make that assumption in the report. What the Commission said amounted merely to this—conceding the *claim* that the paragraph makes it the duty of the carrier to maintain union station facilities, etc. That is, if for the sake of argument we allow that such is the meaning of the paragraph, the Commission must look elsewhere for authority to require the providing of such facilities.

The Commission, in its report of July, 1925 [49], referred [55] to *United States v. Pennsylvania,* 242 U. S. 208. In that case Mr. Justice McKenna says, at page 233:

> "The United States and the Commission insist that they have authority of cases for their two fundamental propositions, to-wit, (1) That it is the duty of the railroad to furnish equipment for the transportation of products, and (2) that the Commission has the jurisdiction to enforce that duty."

Here also counsel assert, first, that it is the duty of the railroads to furnish a facility (a union station) and, second, that the Commission has the jurisdiction to enforce that duty. We submit that there is no difference

in principle in the position of the Commission in the tank car case and that of counsel for the City in the instant case, and that therefore the language of Mr. Justice McKenna affords as complete an answer to counsel's contention as it did to the Commission's contention in the tank car case.

This paragraph 3 deals with the interchange of traffic and of passengers between lines of railway. If it means more than that, if it means that the Commission may compel the Northern Pacific to add 2000 feet of trackage to its team tracks at Dickenson, North Dakota, served by no other line, and may require the C., M. & St. P. at Frederick, South Dakota, served by no other line, to build another freight house, and may require the Illinois Central to enlarge its passenger station at Jackson, Mississippi—if it means all that—then these United States have indeed been a land of neglected opportunity ever since 1887, when the Commission was first clothed with all these powers. For unless the paragraph is limited to interchange facilities, it includes all that we have just suggested and vastly more.

In July, 1888, in the case of *Scofield v. Lake Shore,* 2 I. C. C. 67, the Commission said, at page 76:

> "A careful consideration of this provision of the statute (namely, the paragraph here under consideration) has brought us to the conclusion that it refers only to facilities between connecting lines at terminal points for the interchange of traffic and passengers."

In *United States v. D. L. & W.,* 40 Fed. 101, Judge Wallace said, at page 103, referring to this same provision:

> "This provision refers only to facilities between connecting lines at terminal points for the interchange of traffic and passengers."

This court, in *Railroad Commission v. S. P.*, 264 U. S. 331, seems to have the same view of the meaning of this paragraph, for it says, referring thereto and to paragraph 4 of the same section:

> "It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals in an exchange of interstate traffic and passengers between railways so as to make it prompt and continuous."

Whatever powers the Commission may exercise to compel the establishment of a union station must be predicated and based upon the proposition that the interchange of passengers, mail, baggage and express between the three steam carriers at Los Angeles requires the establishment there of a union station. In other words, the Commission may not found its jurisdiction on the esthetic sense of an art loving city, nor on the harmonies and symmetries of a civic center, nor on the desirability of a union station to boost rents in a part of the city or town where they have steadily declined, nor to effectuate the elimination of grade crossings. The Commission's business is confined to transportation and specifically, so far as this case is concerned, to the need of facilities for the interchange of passengers. Now, strange to say, so insignificant a factor is this interchange of passengers at Los Angeles that the complaint filed by the City in the proceedings before the Commission does not once refer to it, nor does the petition for final order.

It was referred to by the Commission itself in its report of July, 1925, as follows (100 I. C. C. 421, at page 441):

> "One of the principal arguments for a union station as contrasted with several stations is that it promotes to a greater extent the convenience of passengers and makes possible the handling of baggage, express and mail in one location.
>
> "The proportion of travelers reaching Los Angeles who transfer immediately to another railroad is not as large as at many cities. Most travelers who come into Los Angeles from a distance stop in the city or its environs for a short time at least, and for them a union station is less important. Applicants presented estimates that 97 per cent of Los Angeles passenger traffic is terminal rather than interchange traffic. For the first ten days of June, 1923, the Santa Fe, the Salt Lake, and the Southern Pacific brought into Los Angeles 41,030 passengers, of whom 824, or slightly over 2 per cent, transferred from one station to another. This does not include persons stopping over in Los Angeles, passengers transferring at Los Angeles but traveling on separate tickets to and from that point, or passengers transferring to and from the Pacific Electric.
>
> "Since the war period the Santa Fe through service between the east and San Francisco has been much restricted. And its through service between San Diego and Los Angeles in Southern California and San Francisco has been discontinued. As a result, there are undoubtedly many more transfers between the Santa Fe and the Southern Pacific at Los Angeles than formerly. The California Commission engineers' investigations indicated that probably ten per cent of the passengers carried by the steam lines normally transferred from one railroad to another. This does not include passengers transferring to or from the Pacific Electric."

It will be noted that the check referred to was made in 1923, long after the close of the war and long after

the discontinuance of passenger service between Los Angeles and San Francisco by the Santa Fe. In fact, so insignificant is the interchange of passengers at Los Angeles that it has long since ceased to be suggested as a possible basis for the Commission's jurisdiction to order a new union station.

It should be emphasized that this paragraph makes no provision for apportionment by the Commission of the expense of construction, of upkeep, of handling, nor for determination of allowance for use of joint trackage, or for regulation of such use. When the Congress contemplates any of these incidents it makes provision therefor. See section 25 (4) (the Panama Canal Act as amended) and paragraph 4 of section 3.

## V.

## Paragraph 4 of Section 3 Does Not Give the Commission Power to Make the Desired Order.

We assume that counsel for respondent will urge in this court as they did in the court below that the Commission has jurisdiction under this paragraph to make the order sought in this proceeding.

For the convenience of the court, the paragraph is repeated here:

> "If the Commission finds it to be in the public interest and to be practicable without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main line track or tracks, for a reasonable distance outside of such terminal of any carrier by another carrier or other carriers on such terms and for such compensation as the carriers affected may agree upon,

> or, in the event of a failure to agree and the Commission may fix as just and reasonable for the use so required, to be ascertained on the principles controlling compensation in condemnation proceedings."

Counsels' claim in this regard is based upon the allegations of paragraph 18 of the petition for writ of mandamus to the effect that one of the carriers, namely, The Southern Pacific Company, is the owner of a portion of the proposed site of the union station at the Plaza, although it is admitted that the remainder of the lands are privately owned. No claim is made, however (as there could not be), that any station now exists upon the premises or that there are any other terminal facilities located thereon.

It seems to us too clear for argument that the language of the paragraph relates only to the joint use of a pre-existing terminal—and a terminal cannot consist merely of a piece of land, however owned. It means land so equipped with buildings or other facilities as to be in actual use as a railway terminal. This is the construction placed upon the paragraph by the Interstate Commerce Commission in its first decision in the proceeding instituted by the respondent, reported in 101 I. C. C. Reports, at page 426, where it is said: "The provision of section 3, paragraph 4, for joint use of terminal facilities expressly covers only facilities existing when the requirement is made." Since there is no terminal on the premises owned by the Southern Pacific, the Commission would have no authority to order that any other carrier be permitted to use the same, much less to require the owner and other carriers to construct a new terminal facility thereon.

But the respondent, due to the stress of necessity, has gone even farther than this and has attempted to stretch the language of the paragraph to give the Commission authority to order the joint use of certain main line tracks severally owned by the carriers independently of the use of the terminals with which such main lines connect. In the paragraph of the petition in question, it is affirmatively alleged in positive terms "That the carrying into effect of the union passenger depot order requested by the City of Los Angeles, as aforesaid, would require to a substantial extent the joint use of existing railroad terminal facilities in or adjacent to the City of Los Angeles, including the following uses—the use by the Southern Pacific passenger trains from the north of the Santa Fe main line tracks on the west banks of the Los Angeles River from a point north of the North Broadway Viaduct as far south as Aliso street; the use by the Salt Lake passenger trains from Pasadena of the Santa Fe's tracks on the west bank of the river between the same points; the use by the Salt Lake passenger trains from the south of the Santa Fe's tracks from Hobart Junction on the south to the site of the proposed union passenger depot on the north, a total distance of approximately 3 miles; and the use by the Southern Pacific of the Salt Lake's tracks on the east bank of the Los Angeles River from Alhambra avenue southerly to Butte street and thence west over the Salt Lake's Butte street line to Alameda street."

The tracks of the Salt Lake and the Santa Fe which respondent says must be jointly used are main line tracks leading to the passenger station sites of those two companies, but no joint use is to be made of the stations themselves.

The Santa Fe tracks are to be used jointly by all the carriers solely for the purpose of reaching the union station site. The Salt Lake tracks are to be used by the Southern Pacific solely for the purpose of transferring its freight trains between the north and south sections of the City. They are not be used as a part of any existing facilities. Neither are the tracks in question tracks located within the terminals themselves. They are, to use the language of the paragraph, "main line track or tracks outside of such terminals." It is our contention that in these circumstances the Commission has no power to compel either the Santa Fe or the Salt Lake to share the use of their tracks with the other carriers. Our position in this regard is founded upon an analysis of the provisions of the paragraph itself.

The Act does not define either "terminal" or "terminal facilities," but we do not think that any specific definition of such terms is required for the purposes of this case. We take it that there will be no dispute that either a passenger terminal or a freight terminal ends and the main track leading thereto begins at the point where the yard tracks of the terminal begin to fan out from the main line track. Certainly it cannot be successfully argued that the passenger terminal of the Santa Fe on the west bank of the river in the vicinity of First street extends as far north as Aliso street, or that the tracks of that company between Aliso and North Broadway viaduct, which it is contemplated shall be jointly used by the Santa Fe, the Southern Pacific and the Salt Lake, are anything other than main line tracks extending outside the terminal. The same is equally true respecting the Salt Lake tracks on the east bank of the river.

Attention is called to the phrase in the paragraph reading "to require the use of any such terminal facilities, *including* main line track or tracks for a reasonable distance *outside of such terminal.*"

The word "including" as here used connotes that the joint use of the main line track may be ordered when, and only when, the terminal to which the track leads is to be jointly used. It wholly negatives the construction which counsel would seek to give it, that the Commission may order *either* the terminal *or* the main line track to be used. The object sought to be attained by the amendment of the section is a matter of common knowledge. It was to authorize the Commission to order that the joint use of certain passenger and freight terminals which had been put into effect while the railroads were under federal control should continue after the roads were returned to their owners and to give the Commission power to put this practice into effect in other parts of the country in the future if circumstances warranted. The joint use of the terminals or terminal facilities, however, was the primary purpose sought to be attained, and the joint use of main line tracks leading thereto was but an incident to the use of the terminal itself. The reason for including the use of the main line as an incident to the terminal is obvious, for had Congress limited the power of the Commission to requiring the use of the terminal itself, and had not included the main line leading to the terminal, the whole purpose of the Act might have been defeated because the terminal might well be so situated that it could not be reached except by use of the main line of the owner thereof.

To place the interpretation on the amendment which counsel for the City have urged would require the substitution of the word "or" for the word "including" so that the clause would read "to require the use of any such terminal facilities *or* main line track or tracks for a reasonable distance outside of such terminal." Had Congress intended to give the Commission power to require the joint use of, first, a terminal, or second, a main line leading thereto, or, third, both, it would have been a simple matter to do so. The clause would then have read, "to require the use of any such terminal facilities or main line track or tracks for a reasonable distance outside of such terminal, or both." But to give the paragraph the construction which will be urged by counsel is to distort its express language and to read into it something that is not there.

We also say that under this paragraph the Commission has not any power to require a carrier *against its will* to make use of the terminal facilities of another carrier. In other words, such power as the Commission has under this paragraph may be exercised only when a carrier applies for an order authorizing it to use the terminal facilities of another carrier. We are aware that the Commission in *Hayes v. C. M. & St. P.*, 69 I. C. C. 489, held that it did have authority at the instance of a third person to require one carrier to use the facilities of another to the extent of having its cars switched by the owner of the terminal. We believe that the construction of the law given that section by the majority opinion in that case is erroneous and that Mr. Commissioner Hall's views expressed in his dissenting opinion correctly stated the law. No order was entered in the case, and so far as we know

no court has construed the provisions of the paragraph so that a doubt at least exists as to the Commission's power to order a carrier against its will to use the terminal of another carrier.

We are confirmed in our view of the scope of this paragraph by the consideration that to compel a carrier to extend its line by joint trackage right or otherwise, so as to reach a terminal which it does not wish to enter would be contrary to the fifth amendment as shown in earlier pages of this brief.

## VI.

### To Hold That the Transportation Act of 1920 Has Deprived States of Any Power That They May Have Had to Do What Is Here Sought Is Not Tantamount to Holding That the Power Has Been Given to the Interstate Commerce Commission.

It will doubtless be insisted that if the power, whatever it was, "to require in appropriate cases the construction and operation of union passenger stations" has been taken away from the State Commission by the Transportation Act of 1920 it must by the same act have been delegated to the Interstate Commerce Commission. We submit that this is not true either in law or in logic. By the enactment of paragraph 4 of section 3 of the Interstate Commerce Act the Commission, if it finds it to be in the public interests and to be practicable without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities in handling its business, "shall have the power to require the use of any such terminal facilities, including main line track or tracks for a reasonable distance outside of such terminal, of any car-

rier by any other carrier or carriers on such terms or for such compensation as the carriers affected may agree upon." While this section of the act falls short of authorizing the Federal Commission to order carriers to construct a new union station at a new site not then owned by them, at the same time it is our contention that by the enactment of this law Congress has entered the field of regulation respecting the establishment of union stations to such an extent as to automatically terminate whatever power the state may have had to deal with that subject.

When Congress acts on a particular matter relating to Interstate Commerce and the State Statute is thereby annulled, it is not necessary that the Federal Statute cover the subject as fully and completely as did the state law. If the state act covered the subject more completely or in greater detail or with more particularity than does the Federal Act, nevertheless the state act even in those further details is at an end, and they are not implied or read into the Federal Act. Thus in the case of Smithson v. Atchison, 174 Cal. 148, the plaintiff, a minor, brought suit under the Federal Employer's Liability Act. Now there was a State Statute in effect which prohibited the employment of a minor under the age of 18 between 10 o'clock in the evening and 5 o'clock in the morning, and the injury had occurred at about midnight. The trial court instructed the jury that the state act was applicable because it was not in conflict with the Federal law. The upper court quoted from Prigg v. Penn, 16 Peters, 539 (617):

> "* * * For if Congress have a constitutional power to regulate a particular subject and they do actually regulate it in a given manner and in a cer-

> tain form it cannot be that the State Legislature have a right to interfere, and, as it were, by way of complement to the Legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provision made by it. * * * The will of Congress upon the whole subject is as clearly established by what it had not declared as by what it has expressed."

This same passage is quoted in the very recent case of Chesapeake, etc. v. Stapleton, decided by the court May 27, 1929, October Term, 1928, No. 133. This case cites the Smithson case, *supra,* and reviews several other cases involving the same principle.

In Nor. Pac. Ry. v. Washington, 222 U. S. 370, the action was brought to enforce a penalty under the State Statute prescribing the hours of labor of railroad employees. About a month before the alleged violation of the State Statute Congress had adopted the Hours of Service Act which by its terms, however, did not go into effect until the expiration of a year from its passage; and it was held that the Federal Act although not yet effective put an end to the enforcement of the state law.

Erie, etc. v. New York, 233 U. S. 671, involved the same situation. The opinion says at page 683:

> "Regulation is not intended to be a mere wanton exercise of power. It is a restriction upon the management of the railroads. It is induced by the public interest or safety, and the hours of service law of March 4, 1907, is the judgment of Congress of the

> extent of the restriction necessary. It admits of no supplement. It is the prescribed measure of what is necessary and sufficient for the public safety, and of the cost and burden which the railroad must endure to secure it."

*Kansas City v. Van Zant,* 260 U. S. 459, involved a construction of the provisions of the Hepburn Act relating to the issuance of passes. The Act made no provision in regard to limitation of liability toward persons using passes, but the court said that free passes in their entirety were taken charge of by the Act—not only their permission and use but the limitations and conditions upon their use. The court said that before the passage of the Hepburn Act it had decided that a passenger who accepts a free pass may exempt a carrier from responsibility for negligence and that no public policy was violated thereby. But that of course would not have been said before the Hepburn Act was passed had the accident occurred in a state which forbade limitation of liability toward holders of free passes. After the passage of the Hepburn Act the court upheld limitation of liability toward users of passes issued under that Act. The court concluded as follows:

> "The pass proceeded from the federal act. It is controlled necessarily in its incidence and consequences by the federal act to the exclusion of state laws and state policies and such is the effect of decided cases."

By taking over a field of interstate commerce for federal regulation the Congress acts and must act on the assumption that with respect to such regulation it is desirable that there shall be uniformity throughout the United States and the only way to secure uniformity is to

exclude state action within that field of regulation and this not only as to the main subject of regulation but as to all the incidents thereof.

Charleston, etc. v. Varnvill, 237 U. S. 597, involved the question whether a penalty act of S. Carolina, making a delivering carrier responsible for the negligence of an acting carrier resulting in loss or damage, conflicted with the Carmack amendment. Mr. Justice Holmes in the opinion said:

> "When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

Before the enactment of the Federal Employer's Liability Act employees recovered under state laws if injured while engaged in Interstate Commerce the same as any other employees in any other business. Workmen's compensation acts would have applied to employees engaged in interstate commerce as well as to others, but ever since Congress occupied the field by its Act, an employee of a rail carrier engaged in such commerce has his remedy only under the Act, and only so far as Congress has provided a remedy. If he is injured by the negligence of his employer or of a fellow employee he may recover, but otherwise he has no remedy under the act because it provides no remedy and he has no remedy under the State Workmen's Compensation law because the remedy under the Federal Act is exclusive; and not expressly so but only impliedly.

New York Central v. Winfield, 244 U. S. 147.

See also:

Erie v. People, 233 U. S. 671;
Sou. Ry. v. R. R. Commission, 236 U. S. 439;
Napier v. Atlantic Coast Line, 272 U. S. 605.

In the case of the Chusan, Fed. cases 2717, 5 Fed. cases 680, at 684, in an opinion by Mr. Justice Story we read:

> "Congress, having power to regulate the whole subject, regulates it as much by what it leaves without any positive regulations, as by what it expressly provides for. The will of Congress is equally expressed in both cases."

See also:

Houston v. Moore, 5 Wheaton 1.

If there ever was power in the state (which we deny) to do the things which are here sought it has not vanished in the air, but it has been taken over by the Congress of the United States which has found it advisable to delegate to the Interstate Commerce Commission certain powers so necessarily affecting and controlling such constructions and creations as are here sought as to displace and terminate any power in the state in the premises, and this displacement and termination have been none the less accomplished although Congress has not seen fit to delegate to its commission the specific power to order and compel such construction and abandonment and joint uses as are contemplated here.

*Missouri Pacific v. Porter*, 273 U. S. 341, involved a provision of the Interstate Commerce Act relating to bills of lading.

The court says no Act of Congress or order of the Commission prescribed a form of bill of lading for the shipment.

"* * * Section 1, paragraph 6, extends to all carriers and to all transportation subject to the Act. It prescribes a general rule applicable to all regulations and practices affecting the form or substance of bills of lading in order that they may be just and reasonable, and the Commission is empowered and directed to enforce the rule.

"The general regulation of the issuance, form and substance of bills of lading is broad enough to cover contractual provisions like the one involved in this case exempting railroads from liability for loss of shippers' property by fire. Congress must be deemed to have determined that the rule laid down and the means provided to enforce it are sufficient and that no other regulation is necessary. It has power to regulate such commerce, and by its instrumentalities is supreme, and as that power has been exerted state laws have no application. They can not be applied in co-incidence with, as complementary to, or as in opposition to federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction."

In St. Louis v. Hesterly, 228 U. S. 702, it appears that the Statutes of Arkansas gave a right of action for damages to a personal representative of one whose death was caused by the negligence of another and also provided that the personal representative of anyone who died as the result of injuries so sustained could recover for the injury and pain suffered by the decedent, as well as for the financial loss to the estate and expressly provided that such cause of action for damages for pain and suffering should survive the death of the injured person. The Act of Congress of 1908 was entirely silent upon the question whether or not the cause of action for injury, pain and suffering would survive the death of the injured employee. It was argued there that inasmuch as the Federal Statute was silent upon the particular subject of the survival of

such cause of action it left the State Statute on this subject unimpaired. It was contended that the State Statute was not in conflict with but supplemented the Federal Statute. But the court held that the omission of Congress to provide for survival of this cause of action was just as significant as were the express provisions which were included in the act of Congress.

So here it cannot be argued that because the power of the state whatever it was, has been taken away, that same power must have been delegated to the Interstate Commission. On the contrary, the correct theory is that Congress has occupied the field, thereby abrogating the power of the states and delegating to the Interstate Commerce Commission such powers and *only such powers* as Congress saw fit to delegate in the field which it had occupied.

The situation is neither novel nor unusual, it occurs not only under the Commerce clause but in other fields of the Federal Government's activities; it has been noted and treated as something to be expected under our Federal system in numerous cases ever since 1820.

## VII.

### The Court in Railroad Commission v. Atchison, etc., 264 U. S. 331, Did Not Hold That the Interstate Commerce Commission Had the Jurisdiction Here in Question.

In the first place, the jurisdiction of the Federal Commission was not an issue in that case. The only question was the power of the state and the Chief Justice so says early in his opinion:

> "The question in this case is whether the State Railway Commission of California has power to re-

> quire the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company, and the Salt Lake and Los Angeles Railway Company to build an interstate union depot in the city of Los Angeles."

That was indeed the question, and the only question in that case. Anything in the opinion about the Interstate Commerce Commission or its powers was said either *arguendo* or as *obiter dictum*. The point decided, and the only point decided by the court was that the State Commission did not have power to make the order which it attempted to make.

In the second place, no member of the Interstate Commerce Commission could find, either in the decision or in the language of the Chief Justice's opinion, any clear declaration of jurisdiction in the Interstate Commission to do what the appellant asked. Counsel for the City seems to have admitted in the proceedings before the Commission that this opinion left the situation uncertain. This appears from Mr. Commissioner Eastman's concurring opinion where he says, at the close thereof (142 I. C. C. 489, at p. 501):

> "Certainly a conclusion that we have no power to enter an order is at least subject to much doubt. Certainly also the carriers propose to litigate this case as long as and as vigorously as they can. The least possible delay in determining legal questions and arriving at an end of litigation will result, I believe, if we as well as the State Commission enter an order. *This aspect of the matter was strongly and persuasively presented by complainant.*" (Italics ours.)

Mr. Commissioner Eastman also quoted from the opinion of the Supreme Court as follows:

> "Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920."

And Mr. Eastman says it cannot be said that this question was clearly answered. Counsel for the City then thought the law of the case was sufficiently uncertain to justify the Commission in "taking a chance." Doubtless they will now insist that it is sufficiently certain to require the issuance of a writ of mandamus.

As we read the decision, the reason given for holding that the state of California could not make the order which its Commission had tried to make was that Congress, by the Interstate Commerce Act and especially the Transportation Act 1920, had taken control of railroad extensions and abandonments and railroad financing to such an extent and degree as to make action by the Federal Commission imperative before such extensions, abandonments or financing could be accomplished. Whether the powers of the Federal Commission with respect to extensions are compulsive or permissive, or when compulsive and when permissive, the opinion does not say. Certainly no one yet has pointed to any word in the Acts of Congress authorizing the Federal Commission to compel the abandonment of Southern Pacific train service on three miles of Alameda street in Los Angeles. The opinion does not say that the Federal Commission has either permissive or compulsive powers with respect to joint use of main line or any other tracks except for the specific purpose of reaching a terminal under paragraph 4 of section 3. The opinion does not say or intimate that a company *may be compelled* to use the trackage of another company for any purpose under any section of the Act.

When the opinion speaks of the fostering guardianship and control of the Commission it seems to suggest permissive rather than compulsive power. Certainly the power is merely permissive over the issuing of securities, construction of lines and abandonment of lines. The opinion refers to the fact that *no specific provision is made for supervision of union stations by the Interstate Commerce Commission.*

The opinion with respect to paragraph 4 of section 3 says that the Act contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement. This would seem to indicate that paragraph 4 of section 3 relates only to some existing terminal which is to be jointly used by some other company and by the owner of the terminal. It says also it gives the Interstate Commerce Commission the power and duty where the public interest requires to make out of what is the passenger and freight station of one interstate carrier a union station or depot. Where the opinion a little further down says that the court thinks that "means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission" that seems rather to indicate permission rather than compulsion, and where the opinion says that a certificate of the Interstate Commerce Commission is necessary in the construction of a new interstate union station involving a substantial extension of tracks the language would seem to indicate that the Commission has no power to order in a union station because, as we have already said, if the Commission has that power, it would be superfluous to issue certificates of convenience and necessity in connection with the work.

Then we come to the following language (100 I. C. C. 421, at p. 429):

> "But there is a great difference between such relocation of tracks or local union station and what is proposed here. The differences are more than that of mere degree. They and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission."

Now, if it was thought that the Interstate Commission had power to make the order which respondent asks for, why speak of an order by the State Commission?

Again, how is to be explained the following from page 347:

> "To be sure this provision (as to issuance of securities) only becomes operative when securities have to be issued and would not of itself prevent action by a State Commission until such securities are seen to be necessary."

Near the close the opinion remarks on the fact that the City of Los Angeles had filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; and says: "For the reasons given, we think the course taken by the City of Los Angeles was the correct one." But the reasons given as indicated by the next following sentence were that before the extensions could be built or the joint use of the trackage compelled there must be at least permissive action by the Interstate Commerce Commission. So, it says, until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the

Transportation Act the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto. It does not say "until the Interstate Commerce Commission shall have *ordered* the carriers to provide the union station" but only "until the Interstate Commerce Commission shall have *acted*" under those three paragraphs. This language would just as well sustain our position that the jurisdiction of the Commission to issue certificates for extensions, joint use and abandonments can only be set in motion or invoked by the carriers themselves.

## VIII.

**The Ruling Made Against Its Own Jurisdiction by the Interstate Commerce Commission Is Entitled to Great Weight.**

Pennoyer v. McConnaughty, 140 U. S. 1;
U. S. v. Cerecedo, etc., 209 U. S. 338;
U. S. v. Reynolds, 250 U. S. 104.

The case was heard twice by the Interstate Commerce Commission and each time *en banc*. In the earlier report, 100 I. C. C. 412, ten of the 11 Commissioners participated and all of them were in agreement that the Commission did not have jurisdiction to order the creation of the union station. The names of the ten Commissioners were: Atchison, McChord, Meyer, Hall, Eastman, Esch, Campbell, Lewis, Cox, McManamy. Of these Mr. Esch was a member of the House of Representatives at the time when Transportation Act 1920 was enacted and for some years before; was chairman of the committee in charge of that bill in the House and it was generally known as the Esch-Cummins Bill.

It will be noted that the three members of the Commission who dissented from the second report (142 I. C. C. 489), were among those who joined in the earlier report in holding that the Commission did not have jurisdiction.

In the report following the second hearing we understand that Commissioners Taylor, Brainerd and Porter participated and these three new Commissioners all agree that the Commission did not have jurisdiction to make the order.

So we have at least thirteen Commissioners holding once that the Commission did not have jurisdiction. Several Commissioners holding twice against jurisdiction, and only three Commissioners holding first that the Commission did not have jurisdiction and later that it did have jurisdiction.

Even these three admitted the doubtfulness of the right which they at first denied and later affirmed. Their concurring opinion was written by Commissioner Eastman (140). He first said (141):

> "That the question of the Commission's power was not clearly answered by the opinion of the United States Supreme Court."

He then said (142):

> "Whether or not we have the power to enter an order is not free from doubt, but I believe that from paragraph 21 of section 1 and paragraphs 3 and 4 of section 3 such power may be derived. Possibly no one of these paragraphs fully covers the ground,

but they so supplement each other that when taken together their individual deficiencies disappear."

And further on (145) he said:

"My conclusion is that considering the various statutory provisions together we *probably* have power to enter the desired order. But this is not the only reason for such action. Certainly a conclusion that we have no power to enter an order is at least subject to much doubt; certainly also the carriers propose to litigate this case as long and as vigorously as they can. The least possible delay in determining legal questions and arriving at an end of litigation will result, I believe, if we as well as the State Commission enter an order. This aspect of the matter was strongly and persuasively presented by complainants *in view of the manifest uncertainty as to what the law is;* it is a course which we are quite justified in following, and the one which is most likely to result in a *needed clarification of the law.*" (Italics ours.)

It would seem that if reasonable weight is given to the construction placed upon the statute by the Commission charged with the administration of the statute this is not a case in which *mandamus* ought to issue, especially in view of the well established rule that *mandamus* will not issue in cases of doubtful right.

U. S. *Ex Rel* Arant v. Lane, 249 U. S. 367 (371).

Both upon the constitutional question arising under the fifth amendment and upon the question of statutory construction we respectfully submit that we have advanced

argument and authority requiring reversal of the judgment of the Court of Appeals.

Dated September 2nd, 1929.

A. S. HALSTED,
C. W. DURBROW,
FRANK KARR,
Pac. Elec. Bldg., 6th and Main Sts.,
Los Angeles, California;

ROBERT BRENNAN,
E. W. CAMP,
560 South Main St.,
Los Angeles, California,
*Amici Curiae.*

## APPENDIX.

1.

*Civil Code of California,* Sec. 291.

The articles of incorporation of any railroad, wagon road or telegraph organization must also state:

(1) The kind of road or telegraph intended to be constructed;

(2) The place from and to which it is intended to be run and all the intermediate branches;

(3) The estimated length of the road or telegraph line;

(4) That at least ten per cent of the capital stock subscribed has been paid in to the treasury of the intended corporation.

2.

*Civil Code of California,* Sec. 465, subdivision 4.

Every railroad corporation has power: (4) to lay out its road not exceeding ten rods wide and to construct and maintain the same with one or more tracks and with such appendages and adjuncts as may be necessary for the convenient use of the same.

3.

*Civil Code of California,* Sec. 465, subdivision 5.

Every railroad corporation has power: (5) to construct their roads across, along or upon any stream of water, water course, roadstead, bed, navigable stream, street, avenue or highway, or across any railway, canal, ditch, or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life

and property; but the corporation shall restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise.

4.

*Civil Code of California,* Sec. 470.

No railroad corporation must use any street, alley or highway or any of the land or water within any incorporated city or town unless the right to so use the same is granted by a two-thirds vote of the town or city authority from which the right must emanate.

5.

*Statutes and Amendments to the Code of California* 1925, p. 1024, Chapter No. 5, Senate Current Resolution No. 2, approving the charter of the City of Los Angeles, state of California, voted for and ratified by the qualified electors of said City of Los Angeles upon a special municipal election held therein on the 6th day of May, 1924.

Article I, Sec. 3, subdivision (8) (a), page 1032:

The city may grant franchises for fixed terms, permits or privileges, for the construction and operation of plants or works necessary or convenient for furnishing the city and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refrigeration, storage, or any other public utility or service; may prescribe the terms and conditions of any such grant, and may prescribe by ordinance approved by a vote of the people the method of procedure for making such grant,

subject to the limitations elsewhere contained in this charter; except that the Council shall adopt an ordinance which shall establish the procedure for granting to the holder of an existing franchise, any franchise required for an extension of facilities, ordered by the city, as authorized in paragraph (c), of this subdivision, or for granting a new franchise for a period not exceeding 10 years, to replace a franchise about to expire, as authorized in paragraph (d) of this subdivision; provided that such procedure ordinance and every ordinance granting any such franchise shall be subject to the referendum. * * *

(d) No fixed term franchise, permit or privilege for the construction and operation of plants or works necessary or convenient for the furnishing of the city and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refriegration and storage, or any other public service, shall be made for a period exceeding twenty-one (21) years, except in the case of franchises for the construction and operation of subways and elevated railways, as hereinafter provided, and no such grant for the extension of an existing utility, operating under a franchise granted by the city or county, shall be made for a period beyond the expiration date of the franchise, under which such utility or the portion of such utility with which such extension is to be connected, is held or operated, nor in any case for a period longer than twenty-one (21) years. The city may, by ordinance, five (5) years or less prior to the expiration of any franchise, grant to the holder of such franchise a new franchise to replace such franchise about to expire, such new franchise to run for a period not to exceed ten (10) years from the date of expiration of the franchise it replaces.

All such franchises so granted shall be in accordance with the procedure ordinance at the time in force, and shall carry all the conditions required in the original franchise. No fixed term franchise, permit or privilege for the construction or operation of elevated railways or subways shall be granted for a period exceeding forty (40) years for the original franchise, or for a period exceeding ten (10) years for a franchise to replace a franchise about to expire.

6.

*Constitution of California,* Art. XI, Sec. 19.

Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service, or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both. Persons or corporations may establish and operate works for supplying the inhabitants with such services upon such conditions and under such regulations as the municipality may prescribe under its organic law on condition that the municipal government shall have the right to regulate the charges thereof. A municipal corporation may furnish such service to inhabitants outside its boundaries, provided that it shall not furnish any service to the inhabitants of another municipality owning or operating works supplying the same service to such inhabitants without the consent of such other municipality, expressed by ordinance.

# SUPREME COURT OF THE UNITED STATES.

No. 54.—October Term, 1929.

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| Interstate Commerce Commission, Petitioner, *vs.* United States of America, at the Relation of City of Los Angeles, a Municipal Corporation, Respondent. | On Writ of Certiorari to the Court of Appeals of the District of Columbia. |

[November 25, 1929.]

Mr. Chief Justice Taft delivered the opinion of the Court.

By petition filed July 12, 1928, respondent sought from the Supreme Court of the District of Columbia a writ of mandamus compelling petitioner, the Interstate Commerce Commission, to consider the evidence introduced in the proceeding before it known as *Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421; 142 I. C. C. 489, for the purpose of determining whether the Commission shall order the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, and the Los Angeles & Salt Lake Railroad Company to build and use an interstate union passenger station in the City of Los Angeles, California; and after consideration of the evidence, to make such order therein as the facts may require. The Supreme Court of the District dismissed the petition. The Court of Appeals reversed its judgment and remanded the cause for further proceedings. 34 F. (2d) 228. This Court granted a writ of certiorari.

The Railroad Commission of that State had in 1921 (19 Opinion of the R. R. Com. of Cal., pp. 740, 937) ordered the carriers to file plans, etc., and to acquire sufficient land within what is known as the Plaza area in that city for a union passenger station and terminal, to submit plans therefor, and, upon their approval of them by that Commission, to proceed with the construction of the station. The carriers carried these orders by writs of certiorari to the Supreme Court of the State, and that court, in *Atchison, Topeka & Santa Fe Railway Co.* v. *Railroad Commission of Cali-*

*fornia,* 190 Cal. 214, held that by the Transportation Act of 1920 Congress had taken exclusive authority over the matter of a union interstate terminal depot, and the court therefore denied the State Railroad Commission the jurisdiction which it had sought to exercise. The State Railroad Commission petitioned this Court for writs of certiorari and at the same time instituted proceedings before the Interstate Commerce Commission which resulted in the orders above referred to.

This Court granted a writ of certiorari and on April 7, 1924, rendered its decision in *Railroad Commission of California* v. *Southern Pacific Co. et al.,* 264 U. S. 331, wherein, in affirming the judgment of the state court, we held that the relocation of tracks, which were incidental to the proposed union passenger station, required a certificate of approval by the Interstate Commerce Commission under paragraphs 18 to 21 of Section 1, Interstate Commerce Act as amended by Section 402, Transportation Act of 1920 (41 Stat. 476, 478), as a condition precedent to the validity of any action by the carriers or of any order by the State Railroad Commission, and that until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be required to provide a new union station or to extend their main tracks thereto as ordered by the State Railroad Commission.

Pending the hearing of the causes in 264 U. S. 331, the direct proceeding, referred to above, was instituted before the Interstate Commerce Commission by the City of Los Angeles, asking for an order by the Commission requiring the three railroads to build a new union station at the Plaza site. With it were consolidated an application by the Southern Pacific Company for authority to abandon certain main line tracks and the operation of passenger and freight train service on Alameda Street, and an application by the Southern Pacific and the Salt Lake for authority to construct new, and to extend existing, lines.

The Commission held, 100 I. C. C. 421, that it was without authority to require the construction of the new union station. It said in the report, at page 430:

"We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14778. To make the record clear, we repeat that no question of discrimination or preference is presented here and that under the issues framed

in the complaint in No. 14778 we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants."

The Commission, in order to facilitate dispatch in the disposition of the case, although it held that it had no power to require the building of an interstate commerce passenger station, made hypothetical certificates, which could be summarized as follows:

(1) That the public convenience and necessity require the extensions of lines that may be necessary to reach and serve any union passenger station within the plaza which may be constructed in accordance with a lawful order of the State Commission and that may be necessary to provide for the incidental rearrangement of passenger and freight routes, and that the expense involved will not impair the carriers' ability to perform their duties to the public. (2) That public convenience and necessity permit the abandonment of train service on Alameda Street and such other abandonments of lines as would be necessary in connection with the establishment of any such station, so lawfully ordered by the State Commission. The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper operation of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business. As to the application by the Southern Pacific and Salt Lake to extend their lines to permit the joint use of the Southern Pacific's existing station, the Commission's findings were unfavorable and its order denied the application. The Commission's then report was not accompanied by certificates carrying out its findings, and it reserved jurisdiction to alter its findings in the event that the plan of the State Commission, as finally evolved, should be materially different from that 'as here considered to be in the public interest.'

After a further hearing in the direct proceeding instituted by Los Angeles for an order directing the erection of a union station the prayer of Los Angeles was denied. (142 I. C. C. 489.) Thereafter the City filed the petition above referred to in the Supreme Court of the District of Columbia for a writ of mandamus. This was in the present proceeding.

Attached to the petition as exhibits were the pertinent parts of the record in the previous cases. There were filed an answer of the Commission, and a demurrer to the answer. The Commission still adhered to its original report. The Supreme Court of the District entered a judgment overruling the demurrer and, the

City electing to stand upon the petition, dismissed the petition. On an appeal, the judgment was reversed by the Court of Appeals of the District, which held, in substance, that the Commission was vested with supervisory control over the three carriers and that they were subject to an order requiring the construction of the union station and the necessary connecting tracks prayed for.

The sole question for decision is whether the Interstate Commerce Commission has jurisdiction to order the construction of the union station. This issue arises on provisions of the Interstate Commerce Act, 24 Stat. 379, as amended by the Transportation Act of 1920, 41 Stat. 456. These are paragraphs 18 to 22 added to Section 1 of the Original Act, and paragraphs 3 and 4 of Section 3.

These paragraphs and sections of the Transportation Act of 1920 may be shortly stated as follows:

Paragraph 18 forbids the construction of a new line of railroad, or the acquisition or operation of any line of railroad or extension thereof in interstate commerce, unless there shall have been obtained from the Commission a certificate that the present and future convenience and necessity require or will require the construction or operation of additional or extended line of railroad, and forbids any interstate carrier to abandon all or any portion of its line, unless there shall have been obtained from the Interstate Commerce Commission a certificate of public convenience and necessity.

Paragraph 19 requires notice and hearings in any proceeding to secure such certificate.

Section 20 gives the Commission discretionary power to issue such certificates and provides for an injunction at the suit of the United States for any construction, operation or abandonment of such line of railroad or extension thereof without a certificate, and punishes a violation.

Section 21 provides that after a hearing in such proceeding upon complaint, or upon its own initiative without complaint, the Commission may authorize or require by order any carrier by railroad subject to the act to provide itself with safe and adequate facilities for performing as a common carrier its car service, as that term is used in the Act, and to extend its line or lines, if the Commission finds that it is reasonably required in the

interest of public convenience and necessity, and will not impair the ability of the carrier to perform its duty to the public.

Section 3, embracing paragraphs 3 and 4, provides, in paragraph 3, that carriers shall afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith and forbids discrimination.

Paragraph 4 provides that if the Commission finds that to do so will not substantially impair the ability of a carrier owning and entitled to the enjoyment of terminal facilities to handle its own business, it may require the use of any such terminal facilities of any carrier, including main-line track or tracks for a reasonable distance outside of such terminal, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may deem just and reasonable for the use so required, as if in condemnation proceedings.

In its final report the Interstate Commerce Commission held that it had no power to require the construction and operation of a union station upon the site specified. The Commission's report was in part as follows:

"Complainants have again raised the question whether we have power to require the defendants to construct and operate a union passenger station upon the site heretofore specified in our findings. Their contention that we have such power was pressed with vigor upon the original submission before us. The complainants point to section 3, paragraph 3 and 4 of the interstate commerce act as furnishing the necessary statutory authority. As stated in the original report, at page 430, we concluded that we are not empowered to require the construction of a union passenger station as sought in No. 14778, under the issues framed in the complaint therein. . . . In Alabama & Vicksburg Ry. Co. *v.* Jackson & Eastern Ry. Co., 271 U. S. 244, 250, the Supreme Court said:

"'In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set-forth in paragraph 22, Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under paragraph 3 of Sec. 3 to require the establishment of connections between the main lines of carriers were asserted by it in Pittsburgh & W. V. R. R. Co. *v.*

Lake Erie, A. & W. R. Co., 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in Chamber of Commerce *v.* Wichita Falls, R. & Ft. W. R. Co., 109 I. C. C. 81. That its jurisdiction is exclusive was held in People ex rel. New York C. R. Co. *v.* Public Service Commission, 233 N. Y. 113, 119-121. Compare Lake Erie, A. & W. R. Co. *v.* Public Utilities Commission, 109 Ohio St. 103.' "

The Commission proceeded:

"The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case, is obvious. Re-examination of the whole subject again leads us to the conclusion that under existing law we are not empowered to *require* the construction of a union passenger station of the character sought by the complaint. . .

"All issues of fact having been considered and concluded by our original report and by this report on further hearing, nothing remains for us but to deny the application of the city of Los Angeles and the intervener, the Railroad Commission of the State of California, for a final order herein requiring the construction of a station as found in the public interest. . . ."

In weighing the effect of the Transportation Act, it should be noted that in this important measure affecting associations between interstate carriers of a compulsory character, there is nowhere express authority for the establishment of union passenger stations compulsory or otherwise. Emphasis is put on physical connection between the tracks of one carrier and others if permitted by the Interstate Commerce Commission and if properly paid for, either by agreement or condemnation, by the carrier enjoying the use of the track of the other companies. But it is limited in extent to connections with the terminals of other companies within a reasonable length. This Court said:

"The possible peril to interstate commerce in a physical connection between two main tracks shows that the jurisdiction of the Commission over such connections must be exclusive if the duty imposed upon it to develop and control an adequate system of interstate rail transportation is to be effectively performed. Moreover, the establishment of junctions between the main lines of independent carriers is commonly connected with the establishment of through routes and the interchange of car services and is often but a step toward the joint use of tracks." Alabama Railway *v.* Jackson Railway, 271 U. S. 244.

The description in the *Alabama Railway* case, 271 U. S. 244, is that of a physical connection between railroads engaged in interstate commerce, but it contains no suggestion that the junction is to include union passenger stations.

There are cases in the state courts in which by virtue of statutory provision railroads are required expressly to unite in a passenger station, if determined by Commissioners appointed by the Court or by a Railroad Commission. *Mayor and Aldermen of Worcester* v. *Norwich and Worcester Ry. Co.*, 109 Mass. 103, 113; *Railroad Commission of Alabama* v. *Northern Alabama Ry. Co.*, 182 Ala. 357; *Railroad Commission of Alabama* v. *Alabama Great Southern Ry. Co.*, 185 Ala. 354, 362; *Missouri, O. & G. Ry. Co.* v. *State*, 29 Okla. 740; *Chicago, R. I. & P. Ry. Co.* v. *State*, 90 Okla. 173; *State* v. *St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 930; but there is no Federal case in which is built up out of such words as those which we find in the Transportation Act of 1920 authority for requiring such a station.

Without more specific and express legislative direction than is found in the Act, we can not reasonably ascribe to Congress a purpose to compel the interstate carriers here to build a union passenger station in a city of the size and extent and the great business requirements of Los Angeles. The Commission was created by Congress. If it was to be clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in lieu thereof a new union station, at a new site, that power we should expect to find in congressional legislation. Such authority, if conferred in Los Angeles, would have application to all interstate railroad junctions, including the numerous large cities of the country, with their residential, commercial, shopping, and municipal centers now fixed and established with relation to existing terminals. It would become a statute of the widest effect and would enter into the welfare of every part of the country. Various interests would be vitally affected by the substitution of a union station for the present terminals. A selection of its site from the standpoint of a city might greatly affect property values and likewise local transportation systems. The exercise of such power would compel the carriers to abandon existing terminals, to ac-

quire new land and rights of way and enter upon new construction, to abandon large tracts and to sell territory of the same extent as no longer necessary for the use of the carriers.

There would have to be tribunals to apportion the expenditures and cost as between the carriers. A proper statute would seem to require detailed directions, and we should expect the intention to be manifested in plain terms and not to have been left to be implied from varied regulatory provisions of uncertain scope. It would be a monumental work and one requiring the most extensive exercise of expert engineering and railroad construction. It would make possible great changes of much importance in the plans of every city and in the re-arrangement and mutations of railroad property and public and private business structures everywhere. We find no statutory preparation for the organization of such machinery.

We can not agree with the Court of Appeals of the District in its disposition to view Section 3, paragraph 3, as vesting the Interstate Commerce Commission "with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines." The words "reasonable, proper and equal facilities" are of course comprehensive enough to include not only trackage but terminal facilities described as extending a reasonable distance outside of the terminal, but hardly to give the Commission "unlimited power" in the building of union stations.

To attribute to Congress an intention to authorize the compulsory establishment of union passenger stations the country over, without special mention of them as such, would be most extraordinary. The general ousting from their usual terminal facilities of the great interestate carriers would work a change of title and of ownership in property of a kind that would be most disturbing to the business interests of every state in the country.

To recognize what is here sought as within the power of the Commission to order to be done in each of all the great cities throughout the United States and to sustain it as legal, without provision for effective restraint by the carriers, or other interests, would expose the community to possible abuse, with nothing but self-imposed restraint on bureaucratic extravagance.

When the interest of a great city in its improvements is to be promoted entirely at the expense of railroads that enter it, Congress would be expected to hesitate before it would change discretionary leave for the erection of such stations into positive command. In such a case the expenditure of a large amount of capital will not bring with it corresponding increase in the railroad revenues. If Congress had intended to give an executive tribunal unfettered capacity for requisitioning investment of capital of the carriers and the purchase of large quantities of land and material in an adverse proceeding, we may well be confident that Congress would have made its meaning far clearer and more direct than in the present meager provisions of the Transportation Act. The suggestion of complainants is that out of provisions for local union of main tracks and switching tracks we should use our imaginations and develop them into provisions for giant union passenger stations. It is true that the railway systems may be united through switches and connecting tracks in physical connection, but this has not been held to justify great monumental structures, extended in their complicated machinery and superficial extent and expense. There is a difference of real substance between such connecting tracks and switches and junctions and a passenger metropolitan union station. The latter calls into being a new entity naturally requiring new legislative authority. This Court, referring to a kindred matter, said of this case:

"But there is great difference between the relocation of tracks of a local union station and what is proposed here. The findings are more than that of mere degree. They and their consequences are so marked as to constitute a change in kind." 264 U. S. 331, 346.

But it is said that we have already foreclosed the conclusion in this case by our opinion in 264 U. S. 331. The only issue there presented to this Court, was whether it was necessary to secure from the Interstate Commerce Commission its approval of the construction of a union station and the relocation of the connecting tracks proposed. The point in that case was the necessity for the acquiescence by the Interstate Commerce Commission in respect to a union passenger station. We held such a certificate to be necessary before a union station or connecting lines of interstate carriers could be lawful. That is all we held.

It is quite true that we made references in the opinion to a case foreshadowed in the hypothetical certificates of the Commission in the building of a union station. Such references, had, however, not the slightest significance in respect to who could or should build the station, or whence its cost should be defrayed. It was as far as possible from the purpose of the Court in its opinion to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings. They were not before the Court for adjudication.

In what situations, if any, action of the Interstate Commerce Commission may be controlled or corrected by mandamus need not now be considered, because it is apparent that there is here no meritorious basis for exerting such power, even if found to exist.

The judgment of the Court of Appeals of the District of Columbia is reversed.

A true copy.

Test:

*Clerk, Supreme Court, U. S.*